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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 636

RIN 0578–AA21

Wildlife Habitat Incentives Program

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The Farm Security and Rural Investment Act of 2002 amended the authority of the Secretary of Agriculture for the Wildlife Habitat Incentives Program (WHIP) to provide additional cost-share assistance to landowners who enter into an agreement to protect and restore plant and animal habitat for a term of at least 15 years. The current regulations for WHIP require cost-share agreements to be for a term of 5 to 10 years. This change will amend the program regulation to conform to the statutory language.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Roger L. Bensey at (202) 720–3534.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has determined that this final rule does not meet the criteria for a significant regulatory action as specified in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Natural Resources Conservation Service is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rule making with respect to the subject matter of this rule.

Paperwork Reduction Act

No recordkeeping or reporting burden is associated with this rule.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule are not retroactive. Furthermore, the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR part 614 must be exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, NRCS assessed the affects of this rulemaking action on State, local, and Tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments, or anyone in the private sector, and therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion

The Wildlife Habitat Incentives Program (WHIP) was originally authorized under section 387 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), 16 U.S.C. 3836a. WHIP provides cost-share assistance to landowners to develop wildlife habitat on upland, wetland, riparian, aquatic, and other areas. Section 387 did not specify the cost-share rate or the agreement length.

NRCS published its final rule to implement WHIP, 7 CFR part 636, on September 19, 1997 (62 FR 49358). Section 636.6 of the WHIP final rule specified that NRCS would offer to pay no more than 75 percent of the cost of establishing wildlife habitat development practices. Section 636.8 of the WHIP final rule specified that a WHIP cost-share agreement would be for a period of 5 to 10 years, unless a shorter period was recommended to address situations where wildlife habitat was threatened as a result of a disaster.

Section 2502 of the Farm Security and Rural Investment Act of 2002 (the 2002 Act), Public Law 107–171, repealed the original WHIP statute and amended Title XII of the Food Security Act of 1985 to add a new section 1240N as the authority for WHIP. As amended, the Food Security Act authorizes NRCS to provide additional cost-share payments to protect and restore plant and animal habitat under an agreement or contract that has a term of at least 15 years.

This final rule reflects the new authority to provide additional cost-share assistance under agreements or contracts that have a term of at least 15 years. This change will conform the WHIP regulation with statutory authorization. No public comments are being solicited.

List of Subjects in 7 CFR Part 636

Administrative practice and procedure, Agriculture, Soil conservation, Wildlife.

Accordingly, 7 CFR part 636 is amended as follows:

PART 636—WILDLIFE HABITAT INCENTIVES PROGRAM

1. The authority citation for part 636 is revised to read as follows:

Authority: 16 U.S.C. 3839bb–1.

2. Section 636.8 is amended by adding a new paragraph (d) to read as follows:

§ 636.8 Cost-share agreements.

* * * * *

(d) Notwithstanding any limitation of this part, NRCS may enter into a cost-share agreement or contract that:

(1) Is for a term of at least 15 years;

(2) Protects and restores plant and animal habitat; and

(3) Provides cost-share payments in addition to amounts provided under § 636.6 of this part.

Signed in Washington, DC, on July 12, 2002.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 02–18657 Filed 7–23–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF JUSTICE

8 CFR Part 2

28 CFR Part 65

[INS No. 1924–98; AG Order No.2601–2002]

RIN 1115–AF20

Powers of the Attorney General to Authorize State or Local Law Enforcement Officers To Exercise Federal Immigration Enforcement Authority During a Mass Influx of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements section 103(a)(8) of the Immigration and Nationality Act (Act), which permits the Attorney General to authorize any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform or exercise certain powers, privileges, or duties of officers or employees of the Immigration or Naturalization Service (INS or Service) during the period of a declared ''mass influx of aliens.''

This rule provides a cooperative process by which State or local governments can agree to place authorized State or local law enforcement officers under the direction of the INS in exercising Federal immigration enforcement authority whenever the Attorney General determines that such assistance is necessary during a declared mass influx of aliens. This rule allows the Commissioner of the INS to enter into advance written ''contingency agreements'' with State or local law enforcement officials to explain the terms and conditions (including the reimbursement of expenses) under which State or local law enforcement officers can exercise Federal immigration enforcement authority during a declared mass influx of aliens. The rule also ensures that appropriate notifications are made to Congress and the Administration.

Finally, this rule is necessary to ensure that the Service, in conjunction and coordination with State or local governments, can respond in an expeditious manner to urgent and quickly developing events during a declared mass influx of aliens to protect public safety, public health, and national security, while ensuring that performance of duties under this special authorization is cognizant of, and consistent with, constitutional and civil rights protections.

DATES: This final rule is effective August 23, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald W. Dodson, Supervisory Special Agent, Director, Evaluation and Support Branch, Headquarters Office of Investigations, Immigration and Naturalization Service, 425 I Street, NW, Room 1000, Washington, DC 20536, telephone (202) 514–2998.

SUPPLEMENTARY INFORMATION:

What Authority Does the Department of Justice Have to Publish this Regulation?

Section 372 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, Div. C., 110 Stat. 3009–646, amended section 103(a) of the Act, 8 U.S.C. 1103(a), to permit the Attorney General to authorize any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform or exercise any of the powers, privileges, or duties conferred or imposed by the Act or implementing regulations upon officers or employees of the Service during a period of a mass influx of aliens.

Under section 103(a)(8) of the Act, the Attorney General may authorize State or local law enforcement officers to perform such powers, privileges, or duties only if the Attorney General determines that ''an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal response.'' Under these regulations, the Attorney General will be authorized to consider factors described in the definitions of ''immigration emergency'' and ''other circumstances'' contained in 28 CFR 65.81 when determining whether a mass influx of aliens is imminent or occurring. As described in 28 CFR 65.81, the phrase ''immigration emergency'' means

> an actual or imminent influx of aliens which either is of such magnitude or exhibits such other characteristics that effective administration of the immigration laws of the United States is beyond the existing capabilities of the [INS] in the affected area or areas. Characteristics of an influx of aliens, other than magnitude, which may be considered in determining whether an immigration emergency exists include: the likelihood of continued growth in the magnitude of the influx; an apparent connection between the influx and increases in criminal activity; the actual or imminent imposition of unusual and overwhelming demands on law enforcement agencies; and other similar characteristics.

Finally, the phrase ''other circumstances'' means ''a situation that, as determined by the Attorney General, requires the resources of a State or local government to ensure the proper administration of the immigration laws of the United States or to meet urgent demands arising from the presence of aliens in a State or local government's jurisdiction.''

In declaring that a mass influx of aliens is imminent or occurring, the Attorney General will define the boundaries of the geographic area where the declared mass influx of aliens is imminent or occurring. The Commissioner of the INS is authorized to amend and redefine these boundaries to expand or decrease them, as necessary, based on evolving developments. This authority shall not be further delegated. The Attorney General will also define the time periods that denote the beginning and the end of the declared mass influx of aliens. The authority of State or local law enforcement officers to enforce immigration laws under section 103(a)(8) of the Act can be exercised only during a mass influx of aliens, as determined and declared by the Attorney General. State or local law enforcement officers authorized to exercise immigration law enforcement authorities for transporting or guarding aliens in custody may exercise such authorities as necessary beyond the defined geographic boundaries where the declared mass influx of aliens is imminent or occurring. Apart from this exception, State or local law enforcement officers authorized to enforce immigration laws pursuant to section 103(a)(8) of the Act can exercise that authority only within the defined geographic boundaries where the mass influx of aliens has been declared. In all circumstances, State or local officers may exercise authority pursuant to section 103(a)(8) of the Act only during the time period prescribed by the Attorney General.

The implementation of this final rule will facilitate an expeditious and coordinated response during a mass influx of aliens by enabling the Attorney General to draw upon the voluntary assistance of State or local law enforcement resources to meet urgent and quickly developing demands.

A proposed rule with request for comments was published by the Department of Justice in the **Federal Register** on April 8, 1999. 64 FR 17128. The Service received a total of eighteen comments, all of which were considered in the formulation of this final rule. Comments were received from the Office of the Governor of the State of

Florida, the Florida Department of Law Enforcement, law enforcement organizations in the State of Florida representing Florida sheriffs and chiefs of police, and from non-governmental organizations. Of the total, four commenters expressed support for the regulation and fourteen commenters opposed the rule.

What Were the Comments and What Changes Are Being Made in This Final Rule?

Of the fourteen commenters opposing the regulation, nine commenters opposed State or local law enforcement officers exercising Federal immigration enforcement authority under any circumstances. All the opposing comments expressed concern that authorizing State or local law enforcement officers to exercise Federal immigration enforcement authority would result in civil rights violations and racial profiling by State or local police. The majority of opposing comments also expressed concern that the authorization of State or local law enforcement officers to exercise Federal immigration enforcement authority would undermine public safety by interfering with the normal duties of police in serving and protecting the community at large.

Authorization: Scope and Geographic Area

The commenters opposing the regulation generally based their concerns on the premise that the Attorney General would authorize state or local law enforcement officers to exercise Federal immigration enforcement authority during a declared mass influx of aliens in a large geographic area, thereby creating a greater likelihood for racial profiling. Moreover, commenters were concerned that a conflict in police functions would be created that would be counter to the purpose and intent of neighborhood and community policing. Commenters also were concerned that State and local law enforcement officers would use their authority under section 103(a)(8) of the Act to further particular State and local interests, such as gathering information or evidence relating to a State offense.

The Service recognizes and appreciates these concerns, but notes that pursuant to the provisions of section 103(a)(8) of the Act, the Attorney General will authorize State or local law enforcement officers to exercise Federal immigration enforcement authority only during a declared mass influx of aliens, the determination of which will be based on the factors set forth in the definitions of the terms ''assistance,'' ''immigration emergency,'' and ''other circumstances'' as defined in 28 CFR 65.81. The Attorney General will authorize the exercise of only those immigration law enforcement authorities that are essential to meeting the demands imposed by the situation.

In an ''immigration emergency,'' local Service resources are inadequate to meet the immediate threat to public safety, public health, and national security. Immediate response and immigration law enforcement under such circumstances would be essential. It must be presumed that many of the first officials responding to events in such an urgent and quickly developing situation would be State or local law enforcement officers. They must be provided with the necessary authority to provide effective assistance to Federal authorities to contain and control the situation. In these circumstances, the assistance of State or local law enforcement officers would be essential to protect public safety, public health, and national security.

The regulation does not abridge or abrogate constitutional or civil rights protections. The Service believes that sufficient additional safeguards to protect civil rights have been incorporated in the regulation, and that these safeguards will be further strengthened through supplemental policy and procedures. These safeguards include defining the boundaries and duration of the event, thus limiting the geographic area and time period when State and local law enforcement officers would exercise Federal immigration law enforcement authority. The regulation requires Service training and certification for State or local officers who would exercise immigration law enforcement authorities. The Attorney General will authorize the exercise of only those authorities that are essential to meet the demands imposed by the emergent event. The regulation also requires that State or local law enforcement officers exercising Federal immigration law enforcement authorities adhere to applicable Service policies and standards. The regulation also requires that a contingency agreement between the Service and State or local law enforcement agencies include a statement that the exercise of Federal immigration law enforcement authority will not abrogate or abridge constitutional or civil rights protections. Further, the rule requires a complaint reporting and resolution procedure to be in place and a mechanism to record and monitor complaints of misconduct or wrongdoing by State or local officers in the exercise of Federal immigration law enforcement authority.

Contingency agreements with State or local police agencies that voluntarily agree to assist during a declared mass influx of aliens will detail any authority to enforce immigration laws that State or local law enforcement officers will exercise pursuant to section 103(a)(8) of the Act. State or local law enforcement officers will not be authorized to enforce immigration laws pursuant to section 103(a)(8) of the Act during a declared mass influx of aliens without completing a required training program as required by the regulation.

Preliminary contingency agreements between the Service and several State or local law enforcement agencies in the State of Florida have been developed in order to be in place prior to the authorization of immigration law enforcement in the event a mass influx of aliens is declared. Plans call for the Service to develop and provide training to State or local law enforcement officers who would exercise Federal immigration law enforcement authority during such an event. The Service will oversee and coordinate all immigration law enforcement activities during a declared mass influx of aliens.

The regulation has been modified to provide the Attorney General with the sole authority and responsibility, when declaring a mass influx of aliens, to define the initial geographic boundaries where the mass influx of aliens is imminent or occurring. The regulation will authorize the INS Commissioner subsequently to amend and redefine the boundaries to expand or decrease them as necessary based on evolving developments in the event. The authority to determine and define the boundaries of a mass influx of aliens may not be further delegated. This regulatory scheme will limit the geographic area in which designated State or local law enforcement officers would be authorized to perform the functions of immigration officers.

The regulation has been modified to require the Attorney General to determine when a mass influx of aliens event has concluded, at which point the authorization of State and local law enforcement officers to enforce immigration law under the provisions of section 103(a)(8) of the Act would cease.

Potential for Racial Profiling

The majority of the commenters opposing the implementation of the regulation expressed serious concern that the proposed rule would exacerbate racial profiling. To support these reservations, the commenters cited and quoted several reports and news media

articles. A number of the commenters pointed out that the proposed rule indicated bias by indicating that the authority to exercise Federal immigration law enforcement authority would be limited to State or local law enforcement agencies whose jurisdiction is along the southern land border or the coastline of South Florida, thus implying that a mass influx of aliens would be made up of Latino or Caribbean migrants.

Several aspects of the final rule address these concerns. The final rule has been modified to remove reference to the southern land border and the coastline of South Florida and to insert in place of those references the phrase, ''aliens arriving off the coast or near a land border of the United States.'' During a declared mass influx of aliens, the Service would exercise oversight and control to focus the assisting State or local law enforcement resources on the essential immigration law enforcement activities necessary to contain and control the situation in the defined areas of such an event. Moreover, the potential for unwarranted stops based solely on ethnic appearance would be significantly reduced by the presence of other distinguishing factors consistent with the characteristics of the event.

Several comments dealt with training. Several commenters expressed concern that Service training of State or local law enforcement officers would be insufficient to erase biases or to address the likelihood that police would end up stopping those people who look like members of the group entering or about to enter the United States during a declared mass influx of aliens. Also, given the complex and changing nature of immigration law, concern was expressed that adequate training could not be provided to State or local law enforcement officers to enable them properly to exercise Federal immigration enforcement authority. Concern also was expressed that a significant amount of time could pass between the initial training the Service would provide to State or local law enforcement officers and the time the authorization to exercise Federal immigration authority would occur. Therefore, at the time when they would be expected to apply their knowledge of immigration law, State or local law enforcement officers might not be able to recall crucial elements required for effective enforcement. One commenter recommended that the State or local law enforcement officers who may be called upon to exercise Federal immigration enforcement authority during a mass influx of aliens be required to undergo thorough retraining on a regular basis. One of the comments noted:

> In addition, local law enforcement officers should also be trained to distinguish between situations when they are acting to enforce the INA (Immigration and Nationality Act) and when they are not. Special attention should be paid to this difference so that officers do not abuse their powers and claim to be engaging in immigration enforcement activity that is really a pretext for criminal enforcement activities.

The training concerns and recommendations presented in these comments are noted. The Service agrees that training for State or local law enforcement officers who may be called upon to exercise Federal immigration enforcement authority during a mass influx of aliens is a critically important matter. State or local law enforcement officers cannot perform any functions of a Service officer or employee pursuant to section 103(a)(8) of the Act and under the provisions of this rule until they successfully complete training prescribed by the Service and become certified in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues. Recognizing that a significant amount of time could pass between initial training and certification and the time when authorization to enforce immigration laws occurs, the Service also will develop a means to provide appropriate refresher training. The Service believes that it is important to mandate the general requirement for training in the regulation, but that the details of how the training will be developed and provided should be addressed through internal policy. The Service will do its utmost to ensure that the training developed and provided meets the essential and critical requirements for sufficiency and timeliness.

One commenter suggested that in addition to training to prevent constitutional and civil rights violations, the regulation should also require that an entity be established to monitor the exercise of Federal immigration enforcement authority by State or local law enforcement officials. The commenter expressed concern that the proposed regulation did not seem to contemplate the possibility that State or local law enforcement officers authorized pursuant to section 103(a)(8) of the Act to enforce immigration laws would engage in improper activity that might warrant discipline.

The Service agrees that a mechanism is needed to monitor the immigration law enforcement activities of State or local law enforcement officers conducted pursuant to section 103(a)(8) of the Act, but does not agree that an independent entity needs to be established to do so. The regulation has been modified to direct that a mechanism to monitor complaints and allegations regarding the immigration enforcement activities of State or local law enforcement officers pursuant to section 103(a)(8) of the Act be included in the contingency agreements implemented between participating State or local law enforcement agencies and the Service. There are existing publicized means for reporting complaints of wrongdoing or misconduct against State or local law enforcement officers. The Service believes that creating a separate entity to handle complaints and violations with respect to the exercise of authorized immigration law enforcement powers would be less effective and efficient than the procedures already established. However, because of the importance of this issue, this rule has been modified to require that a complaint reporting and resolution procedure for such allegations be included in the contingency agreement between the cooperating State or local department and the Service.

Definition of ''Mass Influx of Aliens''

Several commenters opposing the rule expressed concern that the proposed rule was inherently vague in that it allowed the Attorney General to make the determination that a mass influx of aliens is imminent or occurring without precisely defining what constitutes a mass influx of aliens. Some of these commenters expressed the view that the vague nature of these provisions was problematic in that the discretionary power to determine whether the power should be exercised is in the hands of the same person who would exercise the power. They expressed concern that such discretionary power can become arbitrary when there are no limiting factors or guidelines that must be met before the authority can be legitimately triggered. The commenters noted that the notice of proposed rulemaking did not offer historical precedent as to whether a mass influx of aliens has occurred at any time in the past. The commenters also noted that there is no guidance to quantify how many incoming noncitizens need to be at the border or off the coast of the United States before the Attorney General of the United States can determine that a mass influx of aliens is imminent or occurring.

The Service notes that there have been a number of events during the past two decades that required the Federal

Government to adopt extraordinary measures beyond the capacity of the Service to meet the challenges posed by large groups of undocumented migrants either arriving or en route to the United States. Some of these past events originated in the Caribbean. More recently, significant numbers of undocumented migrants have been discovered bound for this country from China in the holds of cargo vessels. The intent of those directing some of these seagoing cargo vessels has been to run the vessel aground and force their human cargo to abandon ship. In at least one instance, such an event resulted in loss of life. There have been periods when a significant number of such cargo vessels carrying substantial numbers of undocumented migrants in their holds were identified. Again, extraordinary actions by the Federal Government beyond the capacity of the Service were required to deal with these events.

In all of these situations, the undocumented migrants were exposed to extreme hazards and life-threatening conditions. The belief that the Federal Government will not be able to respond and prevent such actions may bolster and encourage such brazen attempts by migrants to enter the United States illegally, with reckless and criminal disregard for human life and safety. The Federal Government must have the capability and the regulatory basis upon which to mobilize and coordinate with State or local law enforcement resources to respond to such events. In so doing, the coordinated efforts of Federal, State, and local governments can be combined to confront, manage, and possibly deter such reckless and illegal behavior by undocumented migrants and those criminal enterprises that seek to prosper unlawfully from them. Such illegal entries into the United States not only greatly endanger the lives of the undocumented migrants, but also endanger the safety, security, and well-being of the United States, affected communities, and the public at large. They cannot go unchecked.

The Service does not believe that it is necessary or appropriate to quantify the basis for the declaring of a mass influx of aliens by the Attorney General. There are several factors articulated in 28 CFR 65.81, specifically those noted in the definitions of ''immigration emergency'' and ''other circumstances,'' that the Attorney General will consider in determining whether to declare a mass influx of aliens.

Some of the commenters opposed any rule that would authorize State and local law enforcement officers to exercise Federal immigration enforcement authority. The Service strongly disagrees with this viewpoint. The exercise of Federal law enforcement authority by State and local law enforcement officers is not unique to this rule. For example, the Department has deputized State and local law enforcement officers to assist them in enforcing federal law. Moreover, this final rule sets forth the guidelines under which the Attorney General can authorize State and local officers to exercise Federal immigration law enforcement authority during a mass influx of aliens and establishes appropriate limits on the exercise of such authority.

Coordinated Law Enforcement Response

Four sets of comments strongly supported the regulation. These comments came from the Office of the Governor of the State of Florida, the Florida Department of Law Enforcement, and from two law enforcement organizations in the State of Florida representing Florida sheriffs and chiefs of police, respectively. All of these commenters pointed out that the State of Florida has experienced a number of immigration-related crises over the years. They unanimously expressed the belief that the implementation of this rule would facilitate coordination between agencies to more effectively meet the challenges and demands that arise during such a mass influx event. These comments strongly advocated the position that safety and security of all parties are the paramount government interests during such an event. The commenters also recognized and supported the establishment of contingency agreements between the Service and State or local law enforcement agencies as an effective means to formalize the working relationships and expectations between the Service and State or local law enforcement agencies during a mass influx event.

The Service believes that these commenters reflected the essence of the statutory intent of section 103(a)(8) of the Act and the purpose of this regulatory action. The declaration of a ''mass influx'' of aliens by the Attorney General would signal an urgent and quickly developing event that requires a coordinated and effective response by the combined resources of the Federal Government and the State or local governments representing the communities that would be directly affected. During such an event, Service resources by themselves would be inadequate to meet the demands imposed by such a crisis. During such an occurrence, the Service would require the use of State or local law enforcement resources to augment available Service resources. Prior planning, appropriate authorizations, adequate training, organized mobilization, and sufficient coordination between the Service and State or local law enforcement agencies would be essential to ensure that public safety, public health, and national security are protected. This regulation provides the foundation and framework to accomplish these essential requirements in the event that an Attorney General declares that a mass influx of aliens is imminent or occurring becomes necessary.

Explanation of Changes

This rule implements the intent of section 103(a)(8) of the Act by providing a mechanism by which a trained cadre of State or local law enforcement officers will be available to enhance the Federal Government's ability to provide an immediate and effective response to a declared mass influx of aliens.

To enable implementation of the Attorney General's authority, the rule provides that the Commissioner of the INS may execute written contingency agreements with State or local law enforcement agencies regarding assistance under section 103(a)(8) of the Act, which may be activated in the event that the Attorney General determines that such assistance is required during a period of a declared mass influx of aliens. Such contingency agreements shall not authorize State or local law enforcement officers to perform any functions of Service officers or employees pursuant to the provisions of section 103(a)(8) of the Act until the Attorney General declares that a mass influx of aliens is imminent or occurring, and specifically authorizes such performance.

Written agreements regarding assistance under 28 CFR 65.83(d), including contingency agreements, shall include the following:

(1) A statement of the powers, privileges, or duties that State or local law enforcement officers will be authorized to perform or exercise and the conditions under which they may be performed or exercised;

(2) a statement of the types of assistance by State or local law enforcement officers for which the Attorney General shall be responsible for reimbursing the relevant parties in accordance with the procedures set forth;

(3) a statement that the relevant State or local law enforcement officers are not authorized to perform any functions of Service officers or employees pursuant

to section 103(a)(8) of the Act until the Attorney General has made a determination pursuant to that section and authorizes such performance;

(4) a requirement that State or local law enforcement officers cannot perform any authorized functions of Service officers or employees pursuant to section 103(a)(8) of the Act until they have successfully completed and been certified in a Service prescribed course of instruction in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues;

(5) a description of the duration of both the written agreement and the authority the Attorney General will confer upon State or local law enforcement officers pursuant to section 103(a)(8) of the Act, along with a mechanism for amending, terminating, or extending the duration of authority and/or the written agreement;

(6) a requirement that the performance of any Service officer functions by State or local law enforcement officers pursuant to section 103(a)(8) of the Act be at the direction of the Service;

(7) a requirement that any State or local law enforcement officer performing Service officer or employee functions pursuant to section 103(a)(8) of the Act must adhere to the policies and standards set forth during the training, including applicable immigration law, immigration law enforcement standards and procedures, civil rights law, and sensitivity and cultural awareness issues;

(8) a statement that the authority to perform Service officer or employee functions pursuant to section 103(a)(8) does not abrogate or abridge constitutional or civil rights protections;

(9) a requirement that a complaint reporting and resolution procedure for allegations of misconduct or wrongdoing by State or local officers designated, or activities undertaken, pursuant to section 103(a)(8) of the Act be in place;

(10) a requirement that a mechanism to record and monitor complaints regarding the immigration enforcement activities of State or local law enforcement officers exercising the authority to enforce immigration laws be in place;

(11) a listing by position (title and name, when available) of the Service officers authorized to provide operational direction to State or local law enforcement officers assisting in a Federal response pursuant to section 103(a)(8) of the Act;

(12) a requirement that a State or local law enforcement agency maintain records of operational expenditures incurred as a result of supporting the Federal response to a mass influx of aliens;

(13) provisions concerning State or local law enforcement officer use of Federal property or facilities, if any;

(14) a requirement that any department, agency, or establishment whose State or local law enforcement officer is performing Service officer or employee functions shall cooperate fully in any Federal investigation related to allegations of misconduct or wrongdoing in conjunction with such functions, or to the written agreement; and

(15) a procedure by which the appropriate law enforcement department, agency, or establishment will be notified that the Attorney General has made a determination under section 103(a)(8) of the Act to authorize State or local law enforcement officers to exercise Federal immigration enforcement authority under the provisions of the respective agreements.

The boundaries of the geographic area where the declared mass influx of aliens is imminent or occurring would be defined by the Attorney General, who would also determine the time period of the mass influx of aliens. The Commissioner is authorized to amend and redefine the geographic boundaries of the area of the mass influx of aliens, including expanding or decreasing the boundaries, as necessary, based on evolving developments in the scope of the event. This authority shall not be further delegated.

State or local law enforcement officers cannot perform any functions of a Service officer or employee pursuant to section 103(a)(8) of the Act and under the provisions of this rule until they successfully complete training prescribed by the Service and become certified in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues.

The Service will provide all necessary training materials and will conduct training sessions to designated officers at sites within their jurisdictional or commuting areas when possible. Any employing State or local law enforcement agency, department, or establishment will be required to fund its officers' transportation, lodging, and subsistence costs as may be required.

This rule amends the existing regulations of the Department of Justice relating to the Immigration Emergency Fund. Under the amended rule, the Department of Justice has the authority to reimburse State or local law enforcement agencies that assist in the Federal response to a mass influx of aliens from any authorizing statutory source or other available funding source, provided such funding exists and has been made available to the Department for this purpose. Therefore, the final rule allows for the reimbursement of these entities up to the amount available to the Department of Justice for such purposes. This rule provides no guarantee of reimbursement for actual expenses incurred but seeks to assure State or local law enforcement agencies that they will not bear undue increased operational expenditures incurred in direct support of a Federal response to declaration of a mass influx of aliens.

Execution of advance contingency agreements will expedite subsequent action by the Attorney General to authorize State or local law enforcement officers to exercise Federal immigration enforcement authority. The execution of advance contingency agreements will also facilitate reimbursement of actual expenditures in support of a Federal response to a mass influx of aliens, pursuant to existing financial requirements.

Within the regulation, the phrase ''State or local law enforcement officers'' means State law enforcement officers, local law enforcement officers, or both. The phrase ''State or local law enforcement agencies'' refers to State law enforcement agencies, local law enforcement agencies, or both.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant impact on a substantial number of small entities because of the following factors:

(1) The Service anticipates that participation in written agreements executed with State or local law enforcement agencies under section 103(a)(8) of the Act and this rule will be limited to those State or local law enforcement agencies whose jurisdiction is along the coast of the United States, or near a land border;

(2) Participation by State or local law enforcement agencies is voluntary, and no State or local law enforcement agency outside the contiguous area of a mass influx of aliens would be affected by implementation of this rule;

(3) This rule provides a means to relieve undue financial burdens on participating law enforcement agencies by allowing for reimbursement of actual

expenses incurred in direct support of a Federal response to declaration of a mass influx of aliens; and

(4) It is anticipated that the authorization of State or local law enforcement officers to enforce immigration law under the provisions of this rule will be infrequent, as such authorization can occur only during times of an actual or imminent mass influx of aliens into the United States pursuant to such declaration by the Attorney General.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined in the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This rule allows for reimbursement by the Department of Justice (contingent upon availability of such funds) as determined by the Attorney General, of actual expenditures incurred by State or local law enforcement agencies whose law enforcement officers are supporting a Federal response to an actual or imminent mass influx of aliens. Moreover, participation by State or local law enforcement agencies is voluntary. Therefore, in accordance with section six of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

As contained in this rule under 28 CFR 65.85(e), the Attorney General will consider all applications from State or local governments for reimbursement of actual expenses incurred in direct support of a Federal response to a mass influx of aliens, until the Attorney General has obligated funding available for such purposes as determined by the Attorney General. The information that must be included in the application for reimbursement is described in 28 CFR 65.85(c). The information required in 28 CFR 65.85(c) is considered an information collection covered under the Paperwork Reduction Act (PRA). This information collection has previously been approved by the Office of Management and Budget (OMB) under the PRA. The OMB control number for this approved information collection is 1115–0184.

List of Subjects

8 CFR Part 2

Authority delegations (government agencies).

28 CFR Part 65

Grant programs—law, Law enforcement, Reporting and recordkeeping requirements.

Accordingly, part 2 of chapter I of title 8 of the Code of Federal Regulations, and part 65 of chapter I of title 28 of the Code of Federal Regulations are amended as follows:

TITLE 8—ALIENS AND NATIONALITY

PART 2—AUTHORITY OF THE COMMISSIONER

1. The authority citation for part 2 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301; 8 U.S.C. 1103.

2. Section 2.1 is amended by:

(a) Designating the existing text as paragraph (a); and by

(b) Adding a new paragraph (b), to read as follows:

§ 2.1 Authority of the Commissioner.

* * * * *

(b) The Commissioner, pursuant to 28 CFR 65.84(a), may execute written contingency agreements with State or local law enforcement agencies regarding assistance under section 103(a)(8) of the Act, 8 U.S.C. 1103(a)(8), which may be activated in the event that the Attorney General determines that such assistance is required during a period of a declared mass influx of aliens, as provided in 28 CFR 65.83(d). Such contingency agreements shall not authorize State or local law enforcement officers to perform any functions of Service officers or employees pursuant to the provisions of section 103(a)(8) of the Act until the Attorney General declares that a mass influx of aliens is imminent or occurring and specifically authorizes such performance. The boundaries of the geographic area of the mass influx of aliens shall be defined by the Attorney General. In addition, the Attorney General will define the inclusive time period of a mass influx of aliens by declaring the beginning and the end of such an event pursuant to 28 CFR 65.83(d). Based on evolving developments in the scope of the event, the Commissioner is authorized to amend and redefine by new definition, as necessary, the geographic area defined by the Attorney General to expand or decrease the boundaries. This authority shall not be further delegated.

TITLE 28—JUDICIAL ADMINISTRATION

PART 65—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

3. The authority citation for part 65 continues to read as follows:

Authority: The Comprehensive Crime Control Act of 1984, Title II, Chap. VI, Div. I, Subdiv. B, Emergency Federal Law Enforcement Assistance, Pub. L. 98–473, 98 Stat. 1837, Oct. 12, 1984 (42 U.S.C. 10501 *et seq.*); 8 U.S.C. 1101 note; Sec. 610, Pub. L. 102–140, 105 Stat. 832.

4. In § 65.80, the first sentence is revised to read as follows:

§ 65.80 General.

The regulations of this subpart set forth procedures for implementing section 404(b) of the Immigration and Nationality Act (''INA''), 8 U.S.C. 1101 note, by providing for Presidential determinations of the existence of an immigration emergency, and for payments from the Immigration Emergency Fund or other funding available for such purposes, to State and

local governments for assistance provided in meeting an immigration emergency. * * *

5. Section 65.83 is amended by:

a. Revising the introductory text; and by

b. Adding a new paragraph (d), to read as follows:

§ 65.83 Assistance required by the Attorney General.

The Attorney General may request assistance from a State or local government in the administration of the immigration laws of the United States or in meeting urgent demands where the need for assistance arises because of the presence of aliens in that State or local jurisdiction, and may provide funding to a State or local government relating to such assistance from the Immigration Emergency Fund or other funding available for such purposes, without a Presidential determination of an immigration emergency, in any of the following circumstances:

* * * * *

(d)(1) If, in making a determination pursuant to paragraph (b) or (c) of this section, the Attorney General also determines that the situation involves an actual or imminent mass influx of aliens arriving off the coast or near a land border of the United States and presents urgent circumstances requiring an immediate Federal response, the Attorney General will formally declare that a mass influx of aliens is imminent or occurring. The determination that a mass influx of aliens is imminent or occurring will be based on the factors set forth in the definitions contained in § 65.81 of this subpart. The Attorney General will determine and define the time period that encompasses a mass influx of aliens by declaring when such an event begins and when it ends. The Attorney General will initially define the geographic boundaries where the mass influx of aliens is imminent or occurring.

(2) Based on evolving developments in the scope of the event, the Commissioner of the INS may, as necessary, amend and redefine the geographic area defined by the Attorney General to expand or decrease the boundaries. This authority shall not be further delegated.

(3) The Attorney General, pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), may authorize any State or local law enforcement officer to perform or exercise any of the powers, privileges, or duties conferred or imposed by the Act, or regulations issued thereunder, upon officers or employees of the Service. Such authorization must be with the consent of the head of the department, agency, or establishment under whose jurisdiction the officer is serving.

(4) Authorization for State or local law enforcement officers to exercise Federal immigration law enforcement authority for transporting or guarding aliens in custody may be exercised as necessary beyond the defined geographic boundaries where the mass influx of aliens is imminent or occurring. Otherwise, Federal immigration law enforcement authority to be exercised by State or local law enforcement officers will be authorized only within the defined geographic boundaries where the mass influx of aliens is imminent or occurring.

(5) State or local law enforcement officers will be authorized to exercise Federal immigration law enforcement authority only during the time period prescribed by the Attorney General in conjunction with the initiation and termination of a declared mass influx of aliens.

6. Section 65.84 is amended by:

a. Revising the section heading; and

b. Revising paragraph (a) of this section, to read as follows:

§ 65.84 Procedures for the Attorney General when seeking State or local assistance.

(a)(1) When the Attorney General determines to seek assistance from a State or local government under § 65.83 of this subpart, or when the President has determined that an immigration emergency exists, the Attorney General shall negotiate the terms and conditions of that assistance with the State or local government. The Attorney General shall then execute a written agreement with appropriate State or local officials, which sets forth the terms and conditions of the assistance, including funding. Such written agreements can be reimbursement agreements, grants, or cooperative agreements.

(2) The Commissioner may execute written contingency agreements regarding assistance under § 65.83(d) of this subpart in advance of the Attorney General's determination pursuant to that section. However, such advance agreements shall not authorize State or local law enforcement officers to perform any functions of Service officers or employees under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), until the Attorney General has made the necessary determinations and authorizes such performance. Any such advance agreements shall contain precise activation procedures.

(3) Written agreements regarding assistance under § 65.83(d) of this subpart, including contingency agreements, shall include the following minimum requirements:

(i) A statement of the powers, privileges, or duties that State or local law enforcement officers will be authorized to exercise and the conditions under which they may be exercised;

(ii) A statement of the types of assistance by State or local law enforcement officers for which the Attorney General shall be responsible for reimbursing the relevant parties in accordance with the procedures set forth in paragraph (b) of this section;

(iii) A statement that the relevant State or local law enforcement officers are not authorized to exercise any functions of Service officers or employees under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), until the Attorney General has made a determination pursuant to that section and authorizes such performance;

(iv) A requirement that State or local law enforcement officers cannot exercise any authorized functions of Service officers or employees under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), until they have successfully completed and been certified in a Service-prescribed course of instruction in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues;

(v) A description of the duration of the written agreement, and of the authority the Attorney General will confer upon State or local law enforcement officers pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), along with a provision for amending, terminating, or extending the duration of the written agreement, or for terminating or amending the authority to be conferred pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8);

(vi) A requirement that the exercise of any Service officer functions by State or local law enforcement officers pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), be at the direction of the Service;

(vii) A requirement that any State or local law enforcement officer performing Service officer or employee functions pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), must adhere to the policies and standards set forth during the training, including applicable immigration law enforcement standards and procedures, civil rights law, and sensitivity and cultural awareness issues;

(viii) A statement that the authority to perform Service officer or employee functions pursuant to section 103(a)(8)

of the INA, 8 U.S.C. 1103(a)(8), does not abrogate or abridge constitutional or civil rights protections;

(ix) A requirement that a complaint reporting and resolution procedure for allegations of misconduct or wrongdoing by State or local officers designated, or activities undertaken, pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), be in place;

(x) A requirement that a mechanism to record and monitor complaints regarding the immigration enforcement activities of State or local law enforcement officers authorized to enforce immigration laws be in place;

(xi) A listing by position (title and name when available) of the Service officers authorized to provide operational direction to State or local law enforcement officers assisting in a Federal response pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8);

(xii) A requirement that a State or local law enforcement agency maintain records of operational expenditures incurred as a result of supporting the Federal response to a mass influx of aliens;

(xiii) Provisions concerning State or local law enforcement officer use of Federal property or facilities, if any;

(xiv) A requirement that any department, agency, or establishment whose State or local law enforcement officer is performing Service officer or employee functions shall cooperate fully in any Federal investigation related to allegations of misconduct or wrongdoing in conjunction with such functions, or to the written agreement; and

(xv) A procedure by which the appropriate law enforcement agency, department, or establishment will be notified that the Attorney General has made a determination under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), to authorize State or local law enforcement officers to exercise Federal immigration enforcement authority under the provisions of the respective agreements.

* * * * *

7. In § 65.85, paragraph (e) is revised to read as follows:

§ 65.85 Procedures for State or local governments applying for funding.

* * * * *

(e) The Attorney General will consider all applications from State or local governments until the Attorney General has obligated funding available for such purposes as determined by the Attorney General. The Attorney General will make a decision with respect to any application submitted under this section that contains the information described in paragraph (c) of this section within 15 calendar days of such application.

* * * * *

Dated: July 17, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–18655 Filed 7–23–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM225; Special Conditions No. 25–207–SC]

Special Conditions: Embraer Model EMB–135BJ; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer Model EMB–135BJ airplane. The Embraer Model EMB–135BJ airplane will have a novel or unusual design feature involving a fuel transfer system whose failure can affect the structural performance of the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this system and its effect on structural performance. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the applicable airworthiness standards.

DATES: The effective date of these special conditions is July 12, 2002. Comments must be received on or before August 23, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Aircraft Certification Service, Attention: Rules Docket (ANM–113), Docket No. NM225, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM225. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Todd Martin, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1178; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected airplanes. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On May 22, 2002, Embraer applied for an amendment to Type Certificate No. T00011AT to include a corporate jet version of the Model EMB–135 airplane. The Model EMB–135BJ, which is a derivative of the EMB–135LR aircraft currently approved under Type Certificate No. T00011AT, is a pressurized, low-wing, ''T'' tail, transport category airplane with tricycle landing gear. It is powered by two Rolls-Royce model AE3007A1P engines, and will carry a maximum of 19 passengers. The primary differences between the existing EMB–135LR and the new EMB–

135BJ are the addition of winglets, increased maximum takeoff weight (to 21,990 kg), increased maximum operational ceiling (to 39,000 feet), additional exposed underbelly fuel tank installed ahead of the air conditioning area, extra internal fuel tanks installed in the back of the baggage compartment, and a modified fuel system due to the extra tanks. The new fuel system can serve to alleviate loads in the airframe and, when in a failure state, can create loads in the airframe. The current regulations do not adequately account for the effects of these systems and their failures on structural performance. These special conditions will require Embraer to substantiate the strength capability and freedom from aeroelastic instabilities after failures in the fuel transfer system.

Type Certification Basis

Under the provisions of § 21.101, Embraer must show that the Model EMB–135BJ meets the applicable provisions of the regulations incorporated by reference in Type Certificate T00011AT, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No.T00011AT are 14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–84; Amendment 25–85; § 25.1517, as amended by Amendment 25–86; Amendment 25–88; Amendment 25–90; §§ 25.331, 25.335(b)(2), 25.345, 25.351, 25.363, 25.371, 25.415, 25.491, 25.499 and 25.561, as amended by Amendment 25–91; Amendment 25–93; § 25.807, as amended by Amendment 25–94; and Amendment 25–97. In addition, the certification basis includes certain special conditions, exemptions, and equivalent safety findings that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* part 25, as amended) do not contain adequate or appropriate safety standards for the Model EMB–135BJ because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB–135BJ must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Feature

The Model EMB–135BJ will have systems that affect the structural performance of the airplane, either directly or as a result of a failure or malfunction. These novel or unusual design features are systems that can serve to alleviate loads in the airframe and, when in a failure state, can create loads in the airframe. The current regulations do not adequately account for the effects of these systems and their failures on structural performance. These special conditions provide the criteria to be used in assessing the effects of these systems on structures.

Conclusion

This action affects only certain novel or unusual design features on one model airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

Immediate Adoption

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect certification of the Embraer Model EMB–135BJ, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Interaction of Systems and Structure

1. General

For airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of subparts C and D of part 25. The following criteria must be used for showing compliance with these special conditions for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, and fuel management systems. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

(a) The criteria defined herein only address the direct structural consequences of the system responses and performances and cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative modes are not provided in these special conditions.

(b) Depending upon the specific characteristics of the airplane, additional studies that go beyond the criteria provided in these special conditions may be required in order to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions, for an airplane equipped with a load alleviation system.

(c) The following definitions are applicable to these special conditions.

Structural performance: Capability of the airplane to meet the structural requirements of part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the

flight manual (*e.g.,* speed limitations, avoidance of severe weather conditions, *etc.*).

Operational limitations: Limitations, including flight limitations that can be applied to the airplane operating conditions before dispatch (*e.g.,* fuel, payload, and Master Minimum Equipment List limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in these special conditions are the same as those used in § 25.1309.

Failure condition: The term failure condition is the same as that used in § 25.1309; however, these special conditions apply only to system failure conditions that affect the structural performance of the airplane (*e.g.,* system failure conditions that induce loads, lower flutter margins, or change the response of the airplane to inputs such as gusts or pilot actions).

2. Effects of Systems on Structures

The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

(a) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C, taking into account any special behavior of such a system or associated functions, or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

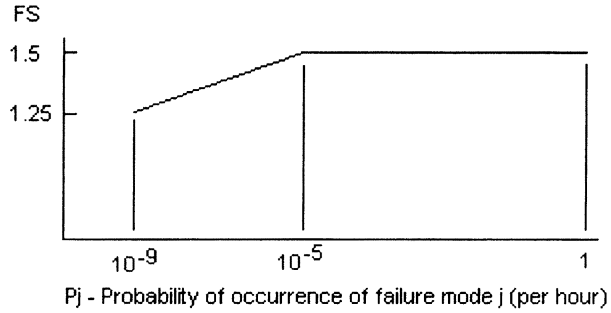
(b) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) *At the time of occurrence.* Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (FS) is defined in Figure 1.

Figure 1

Factor of safety at the time of occurrence



(ii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (b)(1)(i) above.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond Vc/Mc, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) *For the continuation of the flight.* For the airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions at speeds up to Vc, or the speed limitation prescribed for the remainder of the flight, must be determined:

(A) The limit symmetrical maneuvering conditions specified in §§ 25.331 and 25.345.

(B) The limit gust and turbulence conditions specified in §§ 25.341 and 25.345.

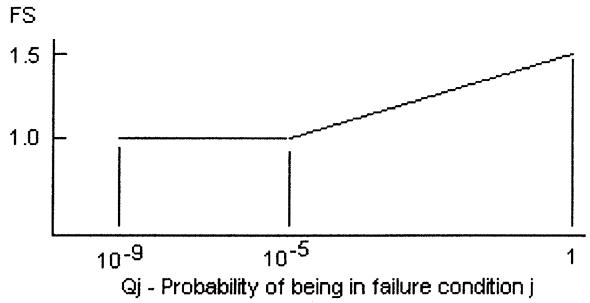
(C) The limit rolling conditions specified in § 25.349, and the limit unsymmetrical conditions specified in § 25.367 and § 25.427(b) and (c).

(D) The limit yaw maneuvering conditions specified in § 25.351.

(E) The limit ground loading conditions specified in §§ 25.473 and 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads defined in paragraph (2)(i) above, multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2
Factor of safety for continuation of flight



$Q_j = (T_j)(P_j)$ where:
T_j = Average time spent in failure condition j (in hours).
P_j = Probability of occurrence of failure mode j (per hour).

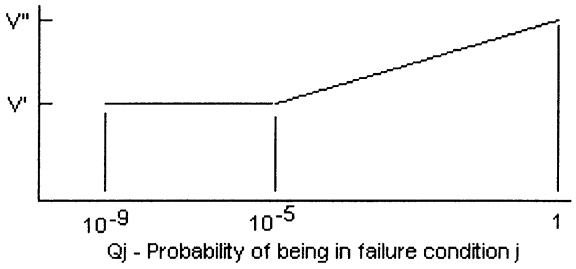
Note: If Pj is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in subpart C.

(iii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (2)(ii) above.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V^I and V^{II} may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3
Clearance speed



V^I = Clearance speed as defined by § 25.629(b)(2).
V^{II} = Clearance speed as defined by § 25.629(b)(1).
$Q_j = (T_j)(P_j)$ where:
T_j = Average time spent in failure condition j (in hours).
P_j = Probability of occurrence of failure mode j (per hour).

Note: If Pj is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V^{II}.

(vi) Freedom from aeroelastic instability must also be shown up to V^I in Figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of part 25, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(c) *Warning considerations.* For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25, or significantly reduce the reliability of the remaining system. The flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of warning systems, to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane, and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of subpart C below 1.25, or flutter margins below V^{II}, must be signaled to the crew during flight.

(d) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain

structural performance, then the provisions of these special conditions must be met for the dispatched condition and for subsequent failures. Flight limitations and expected operational limitations may be taken into account in establishing Q_j as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per hour.

Issued in Renton, Washington, on July 12, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18617 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–01–AD; Amendment 39–12830; AD 2002–15–02]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Power Systems (Formerly Sundstrand Power Systems, Turbomach, and Solar) T–62T Series Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar) T–62T series auxiliary power units (APU's) with compressor wheel part number (P/N) 100636–1 installed. This amendment requires the replacement of compressor wheels P/N 100636–1. This amendment is prompted by a manufacturer's stress analysis that indicates stress levels high enough to initiate and drive crack growth in these compressor wheels. The actions specified by this AD are intended to mandate the replacement of the affected compressor wheels, which if not replaced, could result in uncontained compressor wheel failure and damage to the airplane.

DATES: Effective August 28, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Hamilton Sundstrand Power Systems, Technical Publications Department, P.O. Box 7002, Rockford, IL 61125–7002; telephone (815) 623–5983; fax (815) 966–8525. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5251, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar) T–62T series APU's with compressor wheel P/N 100636–1 was published in the **Federal Register** on March 28, 2002 (67 FR 14889). That action proposed to mandate the replacement of the affected compressor wheels, which if not replaced, could result in uncontained compressor wheel failure and damage to the airplane.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 492 Hamilton Sundstrand Power Systems (formerly Sundstrand Power systems, Turbomach, and Solar) models T–62T–2C, T–62T–25, T–62T–29, and T–62T–39 APU's of the affected design in the worldwide fleet. The FAA estimates that 337 APU's installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per APU to perform the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $16,799 per engine. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $ 6,470,063.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–15–02 Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar): Amendment 39–12830. Docket No. 2002–NE–01–AD.

Applicability

This airworthiness directive (AD) is applicable to Hamilton Sundstrand Power Systems (formerly Sundstrand Power Systems, Turbomach, and Solar) models T–62T–2C, T–62T–25, T–62T–29, and T–62T–39 auxiliary power units (APU's) that have compressor wheel part number (P/N) 100636–1 installed. These APU's are installed on, but not limited to, Fairchild

FH–227, Dassault Falcon 20, Lockheed 1329 series (Jetstar), British Aerospace Jetstream 3101, Raytheon Aircraft HS125–600, –700, –800, and Sabreliner Corporation 60 and 80 airplanes, and Boeing Defense & Space Group 234 Series helicopters.

Note 1: This AD applies to each APU identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For APU's that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To replace affected compressor wheels P/N 100636–1, which if not replaced, could result in uncontained compressor wheel failure and damage to the airplane, do the following:

Cast Steel Compressor Wheel Replacement

(a) For compressor wheels, P/N 100636–1, made of cast steel, identifiable by a four-digit casting lot vendor identification number used as a prefix to the serial number, replace compressor wheels with compressor wheel P/N 4503164, 4504174, or M4504174 as follows:

(1) Replace cast steel compressor wheels with 2,350 or greater cycles-since-new (CSN) on the effective date of this AD within 250 cycles-in-service (CIS) after the effective date of this AD.

(2) Replace cast steel compressor wheels with less than 2,350 CSN on the effective date of this AD before accumulating 2,600 CSN.

Wrought Steel Compressor Wheel Replacement

(b) For compressor wheels, P/N 100636–1 made of wrought steel, identifiable by a serial number beginning with the letter W, replace compressor wheels with compressor wheel P/N 4503164, 4504174, or M4504174 as follows:

(1) Replace wrought steel compressor wheels with 3,600 or greater CSN on the effective date of this AD within 500 CIS after the effective date of this AD.

(2) Replace wrought steel compressor wheels with less than 3,600 CSN on the effective date of this AD before accumulating 4,100 CSN.

(c) Information on procedures for replacing compressor wheel P/N 100636–1 may be found in Hamilton Sundstrand Power Systems service bulletin No. SB–T–62T–49–148, Revision 1, dated December 20, 2001.

Reduced Life Limits

(d) This AD establishes new cyclic life limits for compressor wheels P/N 100636–1, of 2,600 CSN for cast steel compressor wheels and 4,100 CSN for wrought steel compressor wheels. Except as provided in paragraph (e) of this AD, no alternate life limits for these parts may be approved.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Effective Date

(g) This amendment becomes effective on August 28, 2002.

Issued in Burlington, Massachusetts, on July 15, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–18482 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–131–AD; Amendment 39–12825; AD 2002–14–25]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directives (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, that currently requires repetitive inspections (tests) of the actuator clutches of the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications, and replacement of the actuator, if necessary. This amendment expands the applicability in the existing AD. This amendment is prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority. The actions specified in this AD are intended to prevent loss of pitch trim command during the takeoff and climb phase of flight due to improper set point of the actuator clutches, which would result in high pitch control forces and consequent reduced controllability of the airplane. This action is needed to address the identified unsafe condition.

DATES: Effective August 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 8, 2002.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 16, 2002 (67 FR 21567), May 1, 2002).

Comments for inclusion in the Rules Docket must be received on or before September 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–131–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may abe inspected at this location between 9 a.m and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9/anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 202–NM–131–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Braileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–

116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On April 19, 2002, the FAA issued AD 2002–08–18, amendment 39–12730 (65 FR 21567, May 1, 2002), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, to require repetitive inspections (tests) of the actuator clutches of the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications, and replacement of the actuator, if necessary. The actions required by that AD are intended to prevent loss of pitch trim command during the takeoff and climb phase of flight due to improper set point of the actuator clutches, which could result in high pitch control forces and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, has revised the Brazilian airworthiness directive referenced in the existing AD to expand the applicability to include all airplanes equipped with certain actuators of the horizontal stabilizer. The DAC issued Brazilian airworthiness directive 2001–10–02R2, dated May 6, 2002, in order to assure the continued airworthiness of these airplanes in Brazil.

In addition, the manufacturer has issued EMBRAER Service Bulletin 145–27–0082, Change No. 01, dated December 13, 2001. Change No. 01 clarifies certain accomplishment instruments and adds certain airplanes to the effectivity of the original version of the service bulletin. AD 2002–08–18 cites the original version of EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001, as the appropriate source of service information for accomplishment of the requirements.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 2002–08–18 to continue to require repetitive inspections (tests) of the actuator clutches of the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications, and replacement of the actuator, if necessary. This AD expands the applicability in the existing AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organized comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–131–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 100(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12730 (67 FR 21567, May 1, 2002), and by adding a new airworthiness directive (AD), amendment 39–12825, to read as follows:

2002–14–25 Empresa Brasileira De Aeronautica S.A. (Embraer): amendment 39–128.25 Docket 2002–NM–131–AD. Supersedes AD 2002–08–18, Amendment 39–12730.

Applicability: Model EMB–135 and –145 series airplanes; certificated in any category; equipped with horizontal stabilizer actuators as listed in Embraer Service Bulletin 145–27–0082, Change No. 01, dated December 13, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of pitch trim command during the takeoff and climb phase of flight due to improper set point of the actuator clutches of the horizontal stabilizer, which could result in high pitch control forces and consequent reduced controllability of the airplane, accomplish the following:

Requirements of AD 2002–08–18, Amendment 39–12739

Repetitive Inspectors (Tests)/Replacement

(a) For airplanes subject to the requirements of AD 2002–08–18, within 800 flight hours after May 16, 2002 (the effective date of AD 2002–08–18): Do an inspection (test) of the actuator clutches of both the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications per EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001, or Change No. 01, dated December 13, 2001. Repeat the test after that every 2,000 flight hours.

(1) If either test indicates that the clutch is slipping (no PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears, and the measured voltage during trim attempts is greater than 1 volt), before further flight, replace the applicable actuator with an improved actuator and before further flight, repeat the test.

(2) If both tests indicate that the clutch is acceptable (PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears), repeat the test at the time specified in paragraph (a) of this AD.

New Requirements of This AD

(b) For airplanes other than those identified in paragraph (a) of this AD, within 800 flight hours after the effective date of this AD: Do an inspection (test) of the actuator clutches of both the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications per EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001, or Change No. 01, dated December 13, 2001. Repeat the test their that every 2,000 flight hours.

(1) If either test indicates that the clutch is slipping (no PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears, and the measured voltage during trim attempts is greater than 1 volt), before further flight, replace the applicable actuator with an improved actuator per the service bulletin, and before further flight, repeat the test.

(2) If both tests indicate that the clutch is acceptable (PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears), repeat the test at the time specified in paragraph (a) of this AD.

Spares

(c) As of the effective date of this AD, no person shall install an actuator having part number 362200–1007, –1009, –1011, or –1013 on any airplane, unless the actuator clutch is inspected as required by paragraph (a) of this AD.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously per AD 2002–08–18, amendment 39–12730, are approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existing of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (a)(1) of this AD, the actions shall be done in accordance with EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001; or EMBRAER Service Bulletin 145–27–0082, Change No. 01, dated December 13, 2001.

(1) The incorporation by reference of EMBRAER Service Bulletin 145–27–0082, Change No. 01, dated December 13, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001, was approved previously by the Director of the Federal Register as of May 16, 2002 (67 FR 21567, May 1, 2002.)

(3) Copies may be obtained from Empresa Brasileira de Aeronautics S.A. (EMBRAER), P.O. Box 343–CEP 12.225, San Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2001–10–02R2, dated May 6, 2002.

Effective Date

(g) This amendment becomes effective on August 8, 2002.

Issued in Renton, Washington, on July 11, 2002.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18028 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 191

[T.D. 02–38]

RIN 1515–AD02

Manufacturing Substitution Drawback: Duty Apportionment

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations on an interim basis to provide the method for calculating manufacturing substitution drawback where imported merchandise, which is dutiable on its value, contains a chemical element and amounts of that chemical element are used in the manufacture or production of articles which are either exported or destroyed under Customs supervision. Recent court decisions have held that a chemical element that is contained in an imported material that is subject to an *ad valorem* rate of duty may be designated as same kind and quality merchandise for drawback purposes. This amendment provides the method by which the duty attributable to the chemical element can be apportioned. This amendment requires a drawback claimant, where applicable, to make this apportionment calculation.

DATES: This interim rule is effective July 24, 2002. Comments must be received on or before September 23, 2002.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at the U.S. Customs Service, 799 9th Street, NW., Washington, DC, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Chief, Duty and Refund Determinations Branch, Office of Regulations and Rulings, U.S. Customs Service, Tel. (202) 572–8807.

SUPPLEMENTARY INFORMATION:

Background

Drawback—19 U.S.C. 1313

Section 313 of the Tariff Act of 1930, as amended, (19 U.S.C. 1313), concerns drawback and refunds. Drawback is a refund of certain duties, taxes and fees paid by the importer of record and granted to a drawback claimant upon the exportation, or destruction under Customs supervision, of eligible articles. The purpose of drawback is to place U.S. exporters on equal footing with foreign competitors by refunding most of the duties paid on imports used in domestic manufactures intended for export.

Substitution for drawback purposes—19 U.S.C. 1313(b)

There are several types of drawback. Under section 1313(b), a manufacturer can recoup duties paid for imported merchandise if it uses merchandise of the same kind and quality to produce exported articles pursuant to the terms of the statute. Section 1313(b) reads, in pertinent part, as follows:

> (b) *Substitution for drawback purposes* If imported duty-paid merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported. * * *''

Manufacturing substitution drawback is intended to alleviate some of the difficulties in accounting for whether imported merchandise has, in fact, been used in a domestic manufacture. Section 1313(b) permits domestic or other imported merchandise to be used as the basis for drawback, instead of the actual imported merchandise, so long as the domestic merchandise is of the ''same kind and quality'' as the actual imported merchandise.

Several recent court cases have examined the scope of the term ''same kind and quality'' as used in 19 U.S.C. 1313(b). *See E.I. DuPont De Nemours and Co.* v. *United States,* 116 F. Supp. 2d 1343 (Ct. Int'l Trade 2000). *See also International Light Metals* v. *United States,* 194 F.3d 1355 (Fed. Cir. 1999). In these cases, the courts held that a chemical element that is contained in an imported material that is dutiable on its value may be designated as same kind and quality merchandise for purposes of manufacturing substitution drawback pursuant to 19 U.S.C. 1313(b).

In *DuPont,* the court held that apportionment is a feasible method of claiming a drawback entitlement. *DuPont,* 116 F. Supp. 2d at 1348–49. Under these regulations, therefore, a substitution drawback claimant must apportion the duty attributable to a chemical element contained in an *ad valorem* duty-paid imported material if it is claimed that a chemical element was used in the domestic production of articles that were exported or destroyed under Customs supervision within the prescribed time period. The drawback claim on the chemical element that is the designated merchandise must be limited to the duty apportioned to that chemical element on a unit-for-unit attribution using the unit of measure set forth in the Harmonized Tariff Schedule of the United States that is applicable to the imported material. The apportionment is necessary to avoid overpayment of drawback.

Amendment to § 191.26(b) of the Customs Regulations

Section 191.26 of the Customs Regulations (19 CFR 191.26) sets forth the recordkeeping requirements for manufacturing drawback. Paragraph (b) of this section describes the recordkeeping requirements for substitution drawback.

To implement the courts' interpretation of 19 U.S.C. 1313(b), this document amends § 191.26(b) by adding language that explains how to apportion the duty attributable to same kind and quality chemical elements contained in *ad valorem* duty-paid imported materials for purposes of manufacturing substitution drawback. This document also amends § 191.26(b) to provide an example of apportionment calculations.

Duty Apportionment Calculation

In order for a drawback claimant to be able to ascertain what portion of the *ad valorem* duty paid on imported merchandise is attributable to a chemical element contained in the merchandise, an apportionment calculation is necessary. First, if the imported duty-paid material is a compound with other constituents, including impurities, and the purity of the compound in the imported material is shown by satisfactory analysis, that purity, converted to a decimal equivalent of the percentage, is multiplied against the entered amount of the material to establish the amount of pure compound. The amount of the element in the pure compound is to be determined by use of the atomic weights of the constituent elements, converting to the decimal equivalent of their respective percentages, and multiplying that decimal equivalent against the above-determined amount of pure compound. Second, the amount claimed as drawback based on a contained element must be taken into account and deducted from the duty paid on the imported material that may be claimed on any other drawback claim.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC.

Inapplicability of Prior Public Notice and Comment Procedures

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on this regulation are unnecessary and contrary to public interest. The regulatory changes to the Customs Regulations add language necessitated by recent decisions of the Court of International Trade and the Court of Appeals for the Federal Circuit. The regulatory changes benefit the public by providing specific information as to how a drawback claimant is to correctly make the requisite duty apportionment calculations when claiming manufacturing substitution drawback for a chemical element contained in *ad valorem* duty-paid imported merchandise. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 191

Claims, Commerce, Customs duties and inspection, Drawback.

Amendment to the Regulations

For the reason stated above, part 191 of the Customs Regulations (19 CFR part 191), is amended as set forth below.

PART 191—DRAWBACK

1. The general authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

1. Section 191.26 is amended:

a. In paragraph (b)(2) by removing the word ''and'' after the semi-colon;

b. At the end of paragraph (b)(3) by removing the period and adding ''; and''; and

c. By adding a new paragraph (b)(4) to read as follows:

§ 191.26 Recordkeeping for manufacturing drawback.

* * * * *

(b) *Substitution manufacturing.* * * *

(4) If the designated merchandise is a chemical element that was contained in imported material that was subject to an *ad valorem* rate of duty, and a substitution drawback claim is made based on that chemical element:

(i) The duty paid on the imported material must be apportioned among its constituent components. The claim on the chemical element that is the designated merchandise must be limited to the duty apportioned to that element on a unit-for-unit attribution using the unit of measure set forth in the Harmonized Tariff Schedule of the United States (HTSUS) that is applicable to the imported material. If the material is a compound with other constituents, including impurities, and the purity of the compound in the imported material is shown by satisfactory analysis, that purity, converted to a decimal equivalent of the percentage, is multiplied against the entered amount of the material to establish the amount of pure compound. The amount of the element in the pure compound is to be determined by use of the atomic weights of the constituent elements and converting to the decimal equivalent of their respective percentages and multiplying that decimal equivalent against the above-determined amount of pure compound.

(ii) The amount claimed as drawback based on the chemical element must be deducted from the duty paid on the imported material that may be claimed on any other drawback claim.

Example to paragraph (b)(4)

Synthetic rutile that is shown by appropriate analysis in the entry papers to be 91.7% pure titanium dioxide is imported and dutiable at a 5% *ad valorem* duty rate. The amount of imported synthetic rutile is 30,000 pounds with an entered value of $12,000. The total duty paid is $600. Titanium in the synthetic rutile is designated as the basis for a drawback claim under 19 U.S.C. 1313(b). The amount of titanium dioxide in the synthetic rutile is determined by converting the percentage (91.7%) to its decimal equivalent (.917) and multiplying the entered amount of synthetic rutile (30,000 pounds) by that decimal equivalent (.917 × 30,000 = 27,510 pounds of titanium dioxide). The titanium, based on atomic weight, represents 59.93% of the constituents in titanium dioxide. Multiplying that percentage, converted to its decimal equivalent, by the amount of titanium dioxide determines the titanium content of the imported synthetic rutile (.5993 × 27,510 pounds = 16,486.7 pounds). Therefore, up to 16,486.7 pounds of titanium is available to be designated as the basis for drawback. The ratio between the amount of titanium and the total amount of imported synthetic rutile is determined by dividing the weight of the titanium by the weight of the synthetic rutile (16,486.7 ÷ 30,000 = .550) or 55%. Accordingly, 55% of the duty is apportioned to the titanium content which is the designated merchandise of the imported synthetic rutile. As the per-unit duty paid on the synthetic rutile is calculated by dividing the duty ($600) by the amount of the imported synthetic rutile (30,000), the per-unit duty is two cents of duty per pound ($600 ÷ 30,000 = $0.02). The per pound duty on the titanium is calculated by multiplying the factor of 55% (.55 × $0.02 = $0.011 per pound). If an exported titanium alloy ingot weighs 17,000 pounds, in which 16,000 pounds of titanium was used to make the ingot, drawback is determined by multiplying the duty per pound factor ($0.011 per pound) by the weight of the titanium contained in the ingot (16,000 pounds) to calculate the duty available for drawback ($0.011 × 16,000 = $176). Because only 99% of the duty can be claimed, drawback is determined by multiplying the available duty amount by 99% (.99 × $176 = $174.24). As the oxygen content of the titanium dioxide is 45% of the synthetic rutile, if oxygen is the designated merchandise on another drawback claim, that factor would be used to determine the duty available for drawback based on the substitution of oxygen.

Robert C. Bonner,

Commissioner of Customs.

Approved: July 18, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–18609 Filed 7–23–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 97N–0023]

RIN 0910–AA99

Use of Ozone-Depleting Substances; Essential-Use Determinations

AGENCY: Food and Drug Administration, HHS.

ACTION:

SUMMARY: The Food and Drug Administration (FDA) is amending its regulation on the use of chlorofluorocarbon (CFC) propellants in self-pressurized containers to make it consistent with other laws. FDA is setting the standard it will use to determine which FDA-regulated products that utilize an ozone-depleting substance (ODS) are essential under the Clean Air Act. Under the Clean Air Act, FDA, in consultation with the Environmental Protection Agency (EPA), is required to determine whether an FDA-regulated product that utilizes an ODS is essential. FDA is also removing current essential-use designations for products no longer marketed and for metered-dose steroid human drugs for nasal inhalation. FDA will add or remove specific essential-use designations for other products by

engaging in separate notice-and-comment rulemaking.

DATES: *Effective Date*: This rule is effective January 20, 2003.

Applicability Date: The removal of the essential-use exemption for metered-dose steroid human drugs for nasal inhalation applies as of August 25, 2003.

ADDRESSES: This document and related information are available on the Internet at http://www.fda.gov/cder/mdi.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

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I. Background

FDA, in consultation with EPA, determines whether a medical product is essential for purposes of Title VI of the Clean Air Act (42 U.S.C. 7671, *et seq.*) (Title VI). If a medical product is determined to be essential, and meets the other elements of the definition found in section 601 of the Clean Air Act, it will be considered a ''medical device.'' ''Medical devices'' are exempt from the general prohibition on nonessential uses of CFCs found in section 610 of the Clean Air Act. If certain conditions are met, EPA may authorize production of ODS for use in ''medical devices'' under an exemption from the general prohibitions on production and consumption of ODS found in sections 604 and 605 of the Clean Air Act. FDA lists essential medical products in § 2.125 (21 CFR 2.125). Most of the medical products listed as essential are metered-dose inhalers (MDIs). FDA will maintain the designation of ODS medical products such as MDIs as essential until non-ODS medical products adequately meet the needs of patients.

In the **Federal Register** of September 1, 1999 (64 FR 47719), FDA published a proposed rule that sought public comment on the process FDA would use to make essential-use determinations.[1] FDA received 22 comments on the proposed rule and addresses those comments in section IV of this document.

The United States, as a party to the international agreement called the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) (September 16, 1987, S. Treaty Doc. No. 10, 100th Cong., 1st sess., 26 I. L. M. 1541 (1987)), has agreed to phase out production and importation of ODSs, including CFCs. The United States has generally banned the use of CFCs in consumer aerosols for decades and eliminated almost all manufacture and importation of CFCs as of January 1, 1996. However, the Montreal Protocol permits parties to the Protocol to continue to produce or import CFCs for use in essential medical products if such production or importation is approved by the parties, and the United States continues to do so at this time.

The twelfth meeting of the parties to the Montreal Protocol took place in Ouagadougou, Burkina Faso. The parties issued Decision XII/2—''Measures to facilitate the transition to chlorofluorocarbon-free metered-dose inhalers.'' Decision XII/2 is contained in the Report of the Twelfth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The report can be found on the United Nations Environment Programme Web site at http://www.unep.org/ozone/mop/12mop/12mop-9.e.shtml. Decision XII/2 states the following:

> [A]ny chlorofluorocarbon metered-dose inhaler product approved after 31 December 2000 for treatment of asthma and/or chronic obstructive pulmonary disease in a non-Article 5(1) Party is not an essential use [under the Montreal Protocol] unless the product meets the criteria set out in paragraph 1(a) of decision IV/25.

The United States is a non-Article 5(1) Party under the Montreal Protocol. Paragraph 1(a) of Decision IV/25 provides that:

> a use of a controlled substance should qualify as 'essential' [under the Montreal Protocol] only if:
>
> (i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and
>
> (ii) There are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health.

Decision IV/25 is contained in the Report of the Fourth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The report can be found on the United Nations Environment Programme Web site at http://www.unep.org/ozone/mop/04mop/4mop-15.e.shtml.

FDA believes that this rule is consistent with Decision XII/2. This rule is also a key step in fulfilling the United States' obligation under paragraph 5 of Decision XII/2 to develop a national transition strategy that ''includes effective criteria and measures for determining when chlorofluorocarbon metered-dose inhaler product(s) is/are no longer essential.''

Title VI and the Montreal Protocol work in independent but complementary ways. The Montreal Protocol deals primarily with restrictions on the production and importation of new ODSs. Title VI deals with the use of ODSs, as well as their production and importation. The following hypothetical example may be helpful in illustrating the interaction of Title VI and the Montreal Protocol. A United States company makes CFC-propelled plastic party streamers using recycled and stockpiled CFCs. This use of ODSs would not be impacted by the Montreal Protocol because no newly manufactured or imported ODSs were used. However, this use of ODSs would be prohibited by Title VI, because CFC-propelled plastic party streamers are specifically banned by section 610(b)(1) of the Clean Air Act.

[1] FDA included in the proposed rule a summary of the comments the agency received on the advanced notice of proposed rulemaking (ANPRM) published in the **Federal Register** of March 6, 1997 (62 FR 10242).

The purpose of this rule is to implement Title VI. A determination that a product that contains ODSs is essential under Title VI does not guarantee that the manufacturer of that product will be allocated ODSs for use in the product. As the example above illustrates, the ability to manufacture and market an ODS-containing product requires compliance with both the Clean Air Act and the Montreal Protocol.

II. Highlights of the Final Rule

FDA is making the following changes to § 2.125:

- Using the phrase ''ozone-depleting substance'' instead of the word ''chlorofluorocarbon'' in the title and text of the regulation;
- Revising § 2.125(b) to remove explanatory material that has no regulatory effect;
- In revised § 2.125(b), defining a product that is subject to § 2.125 as any food, drug, device, or cosmetic that is, consists in part of, or is contained in an aerosol product or other pressurized dispenser that releases an ODS, rather than limiting the definition to those products that use CFCs as a propellant;
- Changing the designation of ODS products not listed in § 2.125(e) from adulterated and misbranded to nonessential;
- Listing as a separate essential use each active moiety marketed under the current essential uses for metered-dose steroid human drugs for oral inhalation and metered-dose adrenergic bronchodilator human drugs for oral inhalation;
- Eliminating the essential-use designation in § 2.125(e) for metered-dose steroid human drugs for nasal inhalation;
- Eliminating the essential-use designations in § 2.125(e) for products that are no longer marketed;
- Setting the standard to determine when a new essential-use designation should be added to § 2.125;
- Eliminating outdated transitional provisions in current § 2.125(g), (h), (i), (j), (k), and (l); and
- Setting standards to determine whether the use of an ODS in a medical product remains essential.

We are highlighting the most important portions of the final rule here.

A. Removal of the Term ''Propellant''

The agency is defining the products that are subject to § 2.125 as any food, drug, device, or cosmetic that is, consists in part of, or is contained in an aerosol product or other pressurized dispenser that releases an ODS, rather than limiting the application of § 2.125 to products that use a CFC as a propellant in a self-pressurized container. This brings within the scope of the regulation medical products that use ODSs for purposes other than as a propellant. This provision is intended to encompass all products that are regulated by FDA.

B. Change to Essentiality Determinations

Former § 2.125(c) stated that any CFC product not found in § 2.125(e) was adulterated and/or misbranded in violation of the Federal Food, Drug, and Cosmetic Act (the act). FDA is changing this paragraph to reflect the agency's authority under the Clean Air Act to determine whether an ODS product is essential. FDA notes that EPA is responsible for enforcing the provisions of the Clean Air Act. However, FDA is not stating by its removal of the adulterated and/or misbranded provision from § 2.125 that a nonessential ODS product is not adulterated or misbranded. Such products may still be considered adulterated and misbranded under the act.

C. Metered-Dose Steroid Human Drugs for Nasal Inhalation

FDA is removing the essential-use designation for metered-dose steroid human drugs for nasal inhalation for the following reasons:

- Adequate alternative non-ODS products for steroid human drugs for nasal inhalation are currently available, including metering atomizing pumps for administering nasal corticosteroids, other nonsteroid nasal topical therapies, and systemic therapies;
- Patients use the alternative products on a widespread basis; and
- These alternative products have been and continue to be produced and supplied at sufficient levels to meet patient needs.

While it was not a factor in the agency's decision, FDA notes that, unlike other ODS medical products currently being marketed, the diseases for which these products are indicated are not life threatening. FDA also notes that only the three active moieties beclomethasone, budesonide, and triamcinolone are marketed as CFC-nasal steroids and that these three moieties are also marketed in non-ODS formulations.

D. Products No Longer Marketed

FDA is removing the essential-use designations for the following ODS products that are no longer marketed:

- Contraceptive vaginal foams for human use;
- Intrarectal hydrocortisone acetate for human use;
- Polymyxin B sulfate-bacitracin zinc-neomycin sulfate soluble antibiotic powder without excipients, for use on humans; and
- Metered-dose nitroglycerin human drugs administered to the oral cavity.

These drug products are either no longer being marketed or are no longer being marketed in a formulation containing CFCs. Additionally, in instituting a list in § 2.125 of each marketed active moiety for metered-dose adrenergic bronchodilator human drugs for oral inhalation, the following moieties will not be listed as essential uses of ODS, as they are no longer being marketed in a formulation containing CFCs: Isoetharine, isoproterenol, terbutaline.

E. Petitions To Add New Essential Uses

By this final rule, FDA is amending § 2.125 to provide a process for adding investigational uses to § 2.125(e) and amending the existing process for adding noninvestigational uses to § 2.125(e). FDA believes that it would be inappropriate to add new essential uses to § 2.125 in all but the most extraordinary circumstances because of the relatively near-term phaseout of the production and importation of ODSs and because of the United States' commitment to reducing its consumption of ODSs. Therefore, FDA is requiring compelling evidence in support of a petition for a new essential use. For purposes of this rule, compelling evidence is evidence sufficient to establish with reasonable scientific certainty the truth of the matter asserted. The evidence should be detailed and capable of scientific analysis and discussion. Unsupported, conclusory statements are not compelling evidence. Because the Clean Air Act mandates an opportunity for public comment before FDA makes a determination of essential use, a petitioner must disclose all relevant information in a petition to add a new essential use to § 2.125(e). Such information will become publicly available. FDA will use this information in issuing a proposed rule to add the essential use if it finds that the petitioner has submitted compelling evidence.

This new standard applies to all requests for essential-use exemptions submitted after the effective date of this rule.

1. Noninvestigational Uses

Noninvestigational products are products that are not intended to be used in preclinical or clinical

investigations of a medical product. Noninvestigational uses include the use of ODSs in medical products that are commercially distributed under an approved marketing application. FDA does not intend to consider proposing a new essential use for a noninvestigational product unless a petitioner submits:

- Compelling evidence that substantial technical barriers exist to formulating the product without ODSs;
- Compelling evidence that the product will provide an unavailable important public health benefit;
- Information describing the cumulative release of ODS into the atmosphere and a discussion of the significance of the release; and
- The basis for why the release is warranted in view of the unavailable important public health benefit.

2. Investigational Uses

FDA does not intend to consider proposing a new essential use for an investigational use of an ODS medical product unless a petitioner submits:

- Compelling evidence that substantial technical barriers exist to formulating the investigational product without ODSs;
- Compelling evidence that a high probability exists that the investigational product will provide an unavailable important public health benefit;
- Information describing the cumulative release of ODS into the atmosphere and a discussion of the significance of the release; and
- The basis for why the release is warranted in view of the unavailable important public health benefit.

FDA notes that inclusion of an investigational use in § 2.125(e)(4) will not allow commercial manufacture and marketing of an ODS product. A sponsor will need to file a separate petition under § 2.125(f)(1) for a new essential-use determination for commercial marketing of the ODS product.

3. Requesting Addition of a New Essential Use

A party seeking a new essential use will need to file a citizen petition under § 10.30 (21 CFR 10.30) requesting that FDA initiate rulemaking to add a new essential use. The petitioner will need to include compelling evidence justifying addition of the new essential use, as provided for in § 2.125(e). FDA will deny the petition if the petitioner has not submitted compelling evidence. If the petitioner has submitted compelling evidence, FDA will grant the petition and initiate notice-and-comment rulemaking to add the new essential use.

First, the petitioner must demonstrate through compelling evidence that substantial technical barriers exist to formulating the product without ODSs. Generally, FDA intends the term ''technical barriers'' to refer to difficulties encountered in chemistry and manufacturing. To demonstrate that substantial technical barriers exist, the petitioner will have to establish that it evaluated all available alternative technologies and explain in detail why each alternative was deemed to be unusable to demonstrate that substantial technical barriers exist. FDA notes that alternative technologies not suitable for use by general patient populations may be suitable for use in a clinical investigation due to the increased medical supervision provided and the limited use of the investigational new drug (see FDA Response to Biovail Citizen Petition, Docket No. 95P–0045). The agency might consider cost as a technical barrier if the petitioner shows that the cost of using a non-ODS in a product is prohibitively high in comparison to the cost of using an ODS.

Second, the petitioner for a new essential use for a noninvestigational product must include compelling evidence of an unavailable important public health benefit. For investigational products, FDA is requiring the petitioner to provide compelling evidence that there is a high probability that the investigational product will provide an unavailable important public health benefit. ''High probability'' means that it is substantially more likely than not that the investigational product will provide an unavailable important public health benefit.

The agency will give the phrase ''unavailable important public health benefit'' a markedly different construction from the previous phrase ''substantial health benefit.'' For example, the petitioner should show that the use of an ODS would save lives, significantly reduce or prevent an important morbidity, or significantly increase patient quality of life to support a claim of important public health benefit. The petitioner should also show that patients cannot access non-ODS products and that no technology is readily available to produce and distribute non-ODS products. In unusual cases, FDA might accept a showing of nonclinical health benefit, such as the safety of the health care practitioner using the product.

Third, the petitioner must submit compelling evidence showing that the use of the product does not release significant amounts of ODS into the atmosphere. Alternatively, the petitioner may show that the release is warranted in view of the important public health benefit or, for an investigational product, in view of a high probability of an important public health benefit. The petitioner must submit a well-documented statement of the number of products to be manufactured and the amount of ODS to be released by each product.

F. Determinations of Continued Essentiality

In § 2.125(g), FDA sets forth criteria to determine whether an essential-use designation should be removed from § 2.125(e).

1. Products No Longer Marketed

Under § 2.125(g)(1), FDA will propose removal of an active moiety from the essential-use list (§ 2.125(e)) if it is no longer marketed in an ODS formulation. FDA believes failure to market indicates nonessentiality because the absence of a demand sufficient for even one company to market the product is highly indicative that the use is not essential.

2. Products Marketed After January 1, 2005

Section 2.125(g)(2) provides that, after January 1, 2005, FDA may propose that ODS products containing a particular active moiety are nonessential if the moiety no longer meets the essential-use criteria in § 2.125(f). Even if a current essential-use active moiety is not reformulated, sufficient alternative products may exist in the future to fully meet the needs of patients. FDA would designate any remaining active moieties marketed in ODS formulations as nonessential. FDA will consult with an advisory committee and provide the opportunity for public comment before making such a determination.

3. Products for Which Non-ODS Alternatives Containing the Same Active Moiety Are Developed

Under § 2.125(g)(3) and (g)(4), a moiety can remain on the essential-use list until:

- A non-ODS product(s) with the same active moiety is (are) marketed with the same route of administration, for the same indication, and with approximately the same level of convenience of use;
- Supplies and production capacity for the alternative(s) exist or will exist at levels sufficient to meet patient need;
- Adequate U.S. postmarketing data exist; and

• Patients who medically require the ODS product are adequately served by available alternatives.

In addition, a CFC–MDI with an active moiety that is marketed under more than one new drug application (NDA) will not be removed from the essential-use list under § 2.125(g)(4) unless at least two non-ODS products with the same active moiety are marketed under more than one NDA.

a. *Same indication*. In evaluating indications, FDA will require a non-ODS alternative to have a broader indication or an indication or indications identical to that of the ODS product containing the active moiety to be removed from the list of essential uses, except for minor wording changes that do not materially change the meaning of the indication. For example, the non-ODS product could be indicated for treatment of asthma and chronic obstructive pulmonary disease (COPD), whereas the ODS product might only be indicated for asthma.

b. *Same level of convenience of use*. In evaluating whether an alternative has approximately the same level of convenience of use compared to the ODS product containing the same active moiety, FDA will consider whether:

• The product has approximately the same or better portability;

• The product requires approximately the same amount of or less preparation before use; and

• The product requires approximately the same or less physical effort and dexterity.

c. *Supplies and production capacity*. In evaluating whether supplies and production capacity for the non-ODS product(s) exist or will exist at levels sufficient to meet patient need, FDA will consider whether a manufacturer of a non-ODS alternative is able to manufacture the non-ODS alternative in sufficient quantities to satisfy patient demand once the ODS product containing the same active moiety is no longer marketed. FDA generally will expect the non-ODS product to be manufactured at multiple manufacturing sites if the ODS product was manufactured at multiple manufacturing sites.

d. *Postmarketing data*. In evaluating postmarketing data, FDA will look at a composite of all available information. FDA expects to see data showing the acceptance of a non-ODS product in widespread use outside of controlled trials and in subgroups not represented adequately in the clinical trials that served as the basis for marketing approval. FDA will also look for information on device performance in uncontrolled settings, tolerability of products in widespread use, unusual adverse reactions not previously identified in premarketing studies, and effectiveness in broader patient populations.

FDA encourages sponsors to obtain postmarketing use data and to assess the safety, effectiveness, tolerability, and patient acceptance of possible alternatives in postmarketing clinical studies. In particular, FDA encourages sponsors to seek data regarding patient subpopulations not fully represented in premarketing clinical trials. FDA will also evaluate data on acceptance, device performance, tolerability, adverse events, and effectiveness by using postmarketing studies and postmarketing use and surveillance data, including FDA's MedWatch data.

In addition, FDA will consider foreign data supportive of U.S. postmarketing use data if U.S. and foreign formulations, patient populations, and clinical practices were the same or substantially similar. FDA will monitor events related to the transition to non-ODS alternatives in other developed nations for any information relevant to the U.S. transition, including information regarding the safety, effectiveness, tolerability, performance, and patient acceptance of non-ODS alternative products.

e. *Patients adequately served*. FDA will evaluate whether patients who medically require the ODS product are adequately served by available alternatives by determining whether adequate safety, tolerability, effectiveness, and compliance data for the available alternatives exist for the indicated populations and other populations known to medically rely on the ODS product. FDA anticipates that ODS products of the same active moiety marketed in different strengths will need to be replaced by non-ODS products of the same active moiety with more than one strength to adequately serve patients. FDA will also consider whether a high-priced non-ODS product is effectively unavailable to a portion of the patient population because they cannot afford to buy the product.

4. Opportunity for Public Comment

The public will have the opportunity to comment on the acceptability of alternatives before FDA removes the essential-use designation for any particular active moiety. FDA encourages health care professionals and patients to submit medically significant data based on actual use regarding the acceptability of alternatives and whether alternatives adequately serve patients.

III. Changes From the Proposed Rule

Based on the comments it received on the proposed rule, FDA has made some changes in this final rule.

FDA is finalizing § 2.125(g)(2) to permit FDA to evaluate all remaining ODS products after January 1, 2005, instead of just those products that are not available without an ODS. FDA is making this change in response to comments. FDA believes this change is important to cover active moieties marketed as ODS products and represented by two or more NDAs but for which only one non-ODS replacement is marketed, as well as active moieties for which a non-ODS replacement is developed that does not alone meet all of the criteria in § 2.125(g)(3). Under § 2.125(g)(2), FDA will examine the entire marketplace of products available to treat asthma and COPD in determining whether an ODS product remains essential. By entire marketplace, FDA means to include replacements containing the same active moiety, other non-ODS products, as well as remaining CFC products.

FDA is finalizing § 2.125(g)(3)(iii) to require adequate U.S. postmarketing data instead of at least 1 year of postmarketing data. FDA is making this change in response to comments pointing out that more or less data may be necessary depending on factors such as the amount of foreign data available on the same product and the amount of U.S. data that would be available by the time FDA finalized removal of an essential use.

FDA is eliminating the proposal that § 2.125(g)(4) require active moieties marketed as ODS products and represented by multiple strengths be replaced by at least two non-ODS products. FDA is making this change in response to comments. FDA made this proposal to account for different subpopulations that may require different strengths. FDA believes it can adequately account for this need by requiring that replacements adequately serve patients who medically require the ODS product (see § 2.125(g)(3)(iv)).

For consistency, FDA is also finalizing § 2.125(g)(3) to eliminate the phrase ''and one strength:''.

FDA is maintaining the requirement in § 2.125(g)(4) to require active moieties marketed as ODS products and represented by two or more NDAs to be replaced by at least two non-ODS products.

FDA has determined, on its own initiative, that this rule will go into effect 180 days after publication, rather than 1 year after publication as was originally proposed. This change is

being made because of the length of this rulemaking process, the anticipated length of future rulemakings to remove essential-use exemptions, and the importance of eliminating ODSs in a timely manner. The agency has also determined that the elimination of the essential-use exemption for metered-dose steroid human drugs for nasal inhalation will apply 1 year after the date of publication of this rule. Several CFC-containing nasal steroid MDIs are still being marketed. The agency believes that a 1-year period to dispose of existing stocks and to complete the transition to non-ODS-containing alternatives remains appropriate.

IV. Comments on the Proposed Rule

FDA sought comments on the proposed rule. In particular, FDA requested comment on the following issues:

- The criteria FDA should use to determine whether a subpopulation is significant;
- The type of postmarketing information FDA should consider in evaluating the adequacy of alternatives; and
- The timing of the removal of the essential-use designation for nasal steroids.

FDA received 22 written comments on the proposed rule and held one public meeting at the November 22, 1999, session of the Pulmonary and Allergy Drugs Advisory Committee (PADAC). Comments were submitted by individuals, health care providers, patient groups, prescription drug manufacturers, professional associations, Congress, and a union. A summary of the comments received and the agency's responses follow.

A. General Comments About the Proposed Rule

(Comment 1) Two comments supported the proposed rule as reasonable and protective of patient choice. One comment noted that it is difficult for patients to switch therapies and supported the proposed rule as minimally disruptive of patient care. One comment supported the proposed rule as protective of patients and the environment. One comment supported the proposed rule as a reasonable and measured approach. One comment encouraged FDA to finalize the proposed rule as quickly as possible. One comment supported the proposed rule as an improvement over the ANPRM (62 FR 10242, March 6, 1997) FDA published on the same topic. PADAC members were generally supportive of the proposed rule (Ref. 1, page 122 of the transcript).

FDA is generally adopting the rule as proposed, with the changes noted in section III of this document.

B. Number of Alternatives Proposed

(Comment 2) Eight comments supported the moiety-by-moiety approach. Two comments supported the moiety-by-moiety approach, including listing each individual active moiety deemed essential. PADAC was generally supportive of the moiety-by-moiety approach (Ref. 1, pp. 203 and 204 of the transcript).

FDA is using the moiety-by-moiety approach overall, including listing each individual active moiety deemed essential.

(Comment 3) Two comments said that FDA should make essentiality determinations on a product-by-product rather than a moiety-by-moiety approach. One of these comments argued that FDA applies such a product-by-product approach to discontinued products and products outside the classes listed in the proposal. One comment said that FDA should not remove an essential use for an active moiety unless there is a non-ODS alternative available. One comment requested that FDA not remove a product from the essential-use list until it was no longer marketed.

FDA notes that some companies are unlikely to reformulate their CFC products into non-ODS products because of economic considerations. Therefore, FDA did not propose using a product-by-product approach or waiting until a product was no longer marketed because such approaches would not accomplish the eventual phaseout of CFC–MDIs as agreed to by the United States.

FDA disagrees that drugs outside the classes listed in the proposal and discontinued products are treated differently from drugs within the classes. FDA is not listing particular products, but rather active moieties. Although some of these active moieties are represented by one product, as are most of the moieties within the classes listed in the proposal, FDA is using the active moiety within the product as a basis for classification, not the product itself.

(Comment 4) One comment stated that FDA should list as essential uses all currently approved and available asthma-related MDIs, including cromolyn. The comment also stated that some of the active moieties included in table 1 of the proposed rule (64 FR 47719 at 47740, September 1, 1999) were not proposed as essential uses.

FDA proposed, and is including in this final rule, an essential use for cromolyn at § 2.125(e)(4)(iv). In evaluating this comment, FDA compared table 1 in the preamble of the proposed rule with the proposed codified language and found that the active moieties isoetharine and isoproterenol were referenced in the table but not in the proposed codified language. FDA did not include these active moieties in the proposed codified language because the moieties are no longer marketed in CFC formulations. FDA also researched whether any active moieties listed in table 1 of the proposed rule are no longer marketed. FDA has determined that terbutaline is no longer marketed in an ODS formulation and, therefore, is finalizing this rule without including terbutaline in the codified portion of this final rule.

(Comment 5) One comment requested that FDA provide additional details regarding how it would treat over-the-counter (OTC) bronchodilator products.

The only active moiety available as an OTC bronchodilator is epinephrine. Epinephrine CFC–MDIs are manufactured under multiple NDAs. FDA will evaluate the essentiality of epinephrine the same way it will evaluate the essentiality of all active moieties manufactured under multiple NDAs. FDA will not initiate rulemaking to eliminate the essential-use designation for any individual active moiety marketed under multiple NDAs until at least two non-ODS alternatives exist that contain the same active moiety or, after January 1, 2005, until adequate alternatives exist, as described in § 2.125(g). FDA further notes that any reexamination of the appropriateness of continuing the OTC status for bronchodilators is quite separate from determinations on the essential-use status of epinephrine CFC–MDIs.

(Comment 6) Five comments supported the proposal that more than one non-ODS product be available for an active moiety for which more than one CFC product is available currently. One comment stated that FDA should clarify that under § 2.125(g)(4) more than one product is required only for active moieties represented by two or more NDAs. PADAC supported this proposal generally but noted that the replacement products should be adequate to serve the populations that were served by the ODS product (Ref. 1, pp. 196 through 199 of the transcript).

FDA is including in this final rule a requirement that more than one non-ODS product be available for active moieties currently available under two or more NDAs. FDA acknowledges that it may be difficult to argue that a higher strength replacement is an adequate replacement for a product available in

multiple strengths if a population exists that specifically requires a lower strength product (Ref. 1, pp. 197 and 198 of the transcript). Therefore, FDA is removing the requirement that multiple-strength ODS products be replaced by replacement products represented by multiple NDAs. Instead, FDA will consider whether a multiple-strength ODS product is adequately replaced by a non-ODS product by determining whether patients are adequately served by the replacement.

(Comment 7) One comment asked FDA to require that before a multiple-strength ODS product is found to be nonessential it must be replaced by either one non-ODS product with the same active moiety in at least two strengths, or two different non-ODS products with the same active moiety in different strengths.

At the time FDA drafted the proposed rule, FDA considered carefully whether to propose requiring replacing multiple strength ODS products with multiple strength non-ODS products. Instead the agency decided to require replacement by multiple non-ODS products for active moieties for which more than one different product is currently available. FDA chose not to propose to specifically require multiple strength alternatives for multiple strength ODS products because of the difficulty of equating therapeutic need with strengths. For example, if an active moiety were available in two low potency strength alternatives, it would meet the letter of the regulation, but might not meet the therapeutic need for a high-potency formulation. On the other hand, if a replacement product were twice as effective at half the strength, requiring the replacement to be marketed in the same strength would not necessarily serve the same population. FDA believes this reasoning is still valid and declines to adopt the suggestion, but will rather examine all aspects of an alternative's acceptability as a replacement.

(Comment 8) One comment stated that proposed § 2.125(g)(4) could preclude replacement of a multiple-strength CFC–MDI by one non-ODS product with two strengths.

FDA agrees that proposed § 2.125(g)(4) could have prevented a multiple-strength CFC–MDI from being replaced by one non-ODS product with two strengths filed under the same NDA. Therefore, FDA is finalizing § 2.125(g)(4) to require only that ODS products represented by two or more NDAs be replaced by at least two non-ODS products. This criterion could be met by two products that differ in strength and that are approved under one NDA. FDA is eliminating the proposal that active moieties marketed in multiple distinct strengths be replaced by at least two non-ODS products. FDA's intent in proposing that multiple strengths be replaced by multiple products was to ensure that patients who require different strengths are adequately served by replacements. Section 2.125(g)(3)(iv) already requires that patients who medically required the ODS product to be adequately served by the non-ODS product(s) containing that active moiety and other available products. Therefore, FDA does not believe that its original proposal adds any additional protection. For consistency, FDA is also eliminating the phrase ''and one strength'' from § 2.125 (g)(3).

C. Specific Comments on the Proposed Criteria for Phaseout

(Comment 9) One comment stated that FDA should establish a procedure to reinstate an essential use if a replacement is found inadequate after removal of that essential use.

Section 2.125 does provide a mechanism to reinstate an essential use if replacements are found inadequate after removal of that essential use. A petitioner will need to apply under § 2.125(f) to add the essential use to § 2.125(e).

(Comment 10) One comment stated that FDA should permit FDA-regulated products using any ODS to remain on the market.

As explained below in detail in response to comment 52 of this document, FDA-regulated products containing an ODS cannot remain on the market once they are no longer essential.

(Comment 11) One comment stated that FDA should not propose removal of an essential-use listing for an active moiety that does not have a non-ODS replacement after January 1, 2005, unless FDA states the criteria it will use to conclude that alternatives are adequate.

FDA will use notice-and-comment rulemaking if it proposes removal of an essential-use listing for an active moiety that does not have a non-ODS replacement. As part of this rulemaking, FDA will state the criteria it will use to conclude that alternatives are adequate.

(Comment 12) One comment recommended that FDA establish an expert panel to monitor all aspects of the transition. One comment stated that FDA should state the qualifications of the people on the advisory committee and should include members of the expert panel assembled by the National Institutes of Health (NIH) and professionals selected by the House Committee on Commerce's Subcommittee on Health and the Environment.

PADAC comprises individuals possessing recognized expertise and judgment in the fields of pulmonary and allergy medicine. Members have the training and experience necessary to evaluate information objectively and to interpret its significance under various, often controversial, circumstances. Voting members of PADAC have expertise, as demonstrated by training, education, and experience in pulmonary and allergy medicine. To the extent feasible, voting members possess skill and experience in the development, manufacture, or use of the types of drugs to be referred to the committee. FDA strives to ensure that the group of voting members reflects a balanced composition of scientific expertise through members with diverse professional education, training, and experience (21 CFR 14.80(b)(1)). Ad hoc committee members who are representatives of consumer or patient interests, or who have expertise in the particular disease or condition for which the drug under consideration is proposed to be indicated, will be voting members if: (1) They have the requisite scientific or technical expertise, and (2) their participation is not prevented by conflict of interest laws and regulations. Because of inherent conflict of interest concerns, representatives of the drug manufacturing industry will not be voting members of the committee. No person who is a regular full-time employee of the U.S. Government and engaged in the administration of the act may be a voting member of an advisory committee (section 505(n)(3) of the act (21 U.S.C. 355(n)(3))).

The names and qualifications of the current members of PADAC are available at each meeting and by written request mailed or faxed to the following address: Food and Drug Administration, Freedom of Information Staff (HFI–35), 5600 Fishers Lane, Rockville, MD 20857, FAX 301–443–1726.

FDA may invite other individuals, such as members of the expert panel assembled by NIH or professionals selected by the House Committee on Commerce's Subcommittee on Health and the Environment, to serve as ad hoc PADAC members if appropriate.

(Comment 13) Four comments supported proposed § 2.125(g)(2). Three comments recommended FDA undertake an evaluation of all ODS–MDI products after January 1, 2005. One comment stated that FDA should not limit proposed § 2.125(g)(2) to products without a non-ODS replacement.

FDA agrees with these comments and has therefore revised § 2.125(g)(2) to permit the agency to undertake an evaluation of all ODS products after January 1, 2005, not just those products without a non-ODS replacement.

(Comment 14) Three comments stated that FDA should permit manufacturers to demonstrate an ability to meet patient need through a single manufacturing site before requiring multiple manufacturing sites. One comment supported FDA's proposal to require adequate supplies and production capacity, but asked FDA to clarify that a single facility could be adequate to meet patient demand.

FDA did not propose and is not finalizing in this rule a requirement that replacement products be manufactured at multiple sites. This final rule requires only that supplies and production capacity for the non-ODS product exist at levels sufficient to meet patient need. FDA notes, however, that multiple manufacturing sites increase the likelihood that a manufacturer will be able to supply the replacement drug in the event of an unforseen circumstance that shuts down one site.

(Comment 15) Three comments supported the proposal that an alternative be acceptable only if patients are adequately served and the alternative is marketed for the same route of administration, for the same indication, and with approximately the same level of convenience of use as the product it is replacing.

In this final rule, FDA will not eliminate an essential use under § 2.125(g)(3) or (g)(4) unless patients are adequately served by alternatives and an alternative is marketed for the same route of administration, for the same indication, and with approximately the same level of convenience of use as the product it is replacing.

(Comment 16) One comment asked FDA to confirm that only significant variations in convenience that materially impede patient compliance are a basis for consideration of whether a product has approximately the same level of convenience of use.

FDA confirms that only significant variations in convenience that materially impede patient compliance are a basis for consideration of whether a product has approximately the same level of convenience of use. For example, it is possible that a non-ODS MDI may use a mouthpiece that is different from its CFC–MDI counterpart. Such a difference would not normally constitute a significant inconvenience. On the other hand, FDA is aware that physicians and patients value the compact size and ease of use of MDIs. Therefore, a non-ODS product that needed to be plugged in to be used would not have the same level of convenience of use as a portable MDI.

(Comment 17) One comment supported FDA's statement that approximately the same level of convenience of use should mean approximately the same or better portability and the same amount of or less preparation time.

In evaluating whether an alternative has approximately the same level of convenience of use compared to the ODS product containing the same active moiety, FDA will consider whether:

1. The product has approximately the same or better portability;

2. The product requires approximately the same amount of or less preparation before use; and

3. The product does not require significantly greater physical effort or dexterity.

(Comment 18) One comment asked FDA to revise the rule to state that a non-ODS product need only provide a level of convenience that would not significantly impair safe and effective use.

FDA is not revising this rule to state that convenience of use means only that a non-ODS product does not significantly impair safe and effective use. Although products exist already that are safe and effective without providing the same level of convenience of use as CFC–MDIs, such products do not represent sufficient treatment options. For example, solutions for nebulization safely and effectively treat asthma and COPD. However, nebulizers are generally not readily portable and usually require an external power source to work. If such solution products were the only means to treat asthma and COPD, patients with these diseases would be highly restricted in where and how they could receive their treatment. FDA does not believe such restrictions are reasonable or medically appropriate.

(Comment 19) One comment asked that FDA eliminate essential uses based on indications. One comment argued that FDA should eliminate essential uses on an indication-by-indication basis and require revised labeling accordingly.

FDA is not eliminating essential uses based on indications. It is extraordinarily difficult to control to whom marketed drugs are prescribed. FDA believes such an effort would be ineffective. Therefore, FDA is not adopting this suggestion.

(Comment 20) Three comments supported removing essential use designations for products no longer marketed.

FDA is removing the essential-use designations for products no longer marketed and will continue to propose removal of such designations under § 2.125(g)(1) as products are removed from the market.

(Comment 21) One comment stated that FDA should not eliminate an essential use unless alternatives are found to be as safe, effective, well tolerated, and inexpensive as CFC–MDIs.

In general, the criteria cited in this comment match the criteria in this final rule. Although rigid cost comparison is not planned, FDA will consider cost under the criterion of whether patients are adequately served by the non-ODS alternatives.

(Comment 22) One comment suggested that FDA modify § 2.125(f) to specify that a petition to remove an essential use must submit compelling evidence that the criteria in § 2.125(g)(3) or (g)(4) are met.

FDA is finalizing § 2.125(g) to clarify that a petitioner must submit compelling evidence that an essential use should be removed from § 2.125(e). If FDA grants the petition, FDA will propose removal of that essential use through notice-and-comment rulemaking. During the rulemaking period, the public will have the opportunity to comment on the adequacy of the evidence in support of the proposal to remove the essential use.

(Comment 23) One comment supported requiring that all patient groups be adequately served.

FDA agrees with this comment and therefore is including in this final rule a requirement that patients who medically required the ODS product are adequately served by the non-ODS product(s) containing that active moiety and other available products (§ 2.125(g)).

(Comment 24) One comment asked that FDA revise § 2.125(g)(4) to add the word ''each'' to clarify that each replacement product is subject to independent evaluation using the substitution criteria.

FDA is not adding the word ''each'' to § 2.125(g)(4). It is not FDA's intent that each replacement product be subject to independent evaluation using the substitution criteria. Rather, it is FDA's intent to ensure that patients are adequately served by available options.

D. Patient Subpopulations

(Comment 25) One comment stated that every subpopulation is significant. One comment asked that FDA consider the severity of impact on patients rather

than the numbers in a subpopulation. PADAC noted that some subgroups that might require particular attention are the elderly, pregnant women, urban patients, low-income patients, minority populations, and people who cannot cooperate at all in using a device because of neurological or other health problems (Ref. 1, pages 171 to 196 of the transcript). However, PADAC also acknowledged that these same groups have problems with existing products and stated that FDA should not set a standard for new products that cannot be met by existing products (Ref. 1, pp. 187 and 196 of the transcript).

FDA recognizes that each patient is important. FDA also recognizes that patients' asthma management programs are individualized and that changes in these programs require patience, education, and consultation with health care providers. FDA encourages patients to try appropriate new therapies as they become available and will ask patients to provide first-hand feedback to FDA as part of notice-and-comment rulemaking proposing to remove an essential use. FDA will carefully consider all such comments in determining whether a use remains essential. However, FDA notes that, just as all patients are not served by one CFC–MDI, all patients will not be served by a single alternative product. Therefore, FDA does not believe it is appropriate to make essential-use determinations on a patient-by-patient basis, just as the agency would not make determinations about whether a drug should remain on the market based on the experience of one patient or a small handful of patients.

(Comment 26) One comment stated that FDA proposed to determine essentiality based on the needs of patients who use the product for unapproved uses and asked that FDA limit its evaluations to approved uses. The comment cited the statement ''for the indicated populations and other populations known to medically rely on the ODS product'' (64 FR 47719 at 47723).

Although FDA will generally concentrate on those populations for whom a product is indicated in approved labeling, FDA also recognizes that there are populations that medically rely on CFC–MDIs even though the CFC–MDIs are not labeled for their use. FDA will consider information from these populations in making its essential-use determinations.

(Comment 27) One comment requested that FDA confirm that alternatives would have to cover all significant indications before being considered acceptable.

FDA confirms that the available alternatives should cover all significant indications before the agency removes an essential use. In general, non-ODS products with the same active moiety should be approved for the same indications as their CFC counterparts prior to being considered as alternatives. For example, if a CFC–MDI is approved for use in the pediatric population as young as age 6 but the non-ODS alternatives are only labeled for children age 12 and above, a significant patient subpopulation would exist that might not be adequately served by non-ODS products. Absent other data, the agency would not eliminate the essential-use designation for the CFC–MDI based on this factor alone. FDA notes, however, that FDA will examine all available treatment options, not just the non-ODS product(s) containing the moiety for which FDA proposes eliminating an essential use, in determining whether patients are adequately served. FDA will examine all replacement products, as well as remaining ODS products.

(Comment 28) One comment recommended that FDA revise § 2.125(g)(3)(i) to replace the word ''indication'' with ''indication(s)''.

After consideration, FDA has decided not to replace the words ''indication'' with ''indication(s)'' in § 2.125(g)(3)(i). Multiple non-ODS products may replace the ODS product, and FDA does not intend to require each of those products to carry each of the indications approved for the ODS product. Instead, FDA will examine whether all of the products together cover the same indications as the ODS product.

E. Postmarketing Data and Suggested Duration

(Comment 29) One comment stated that FDA must use methods in addition to MedWatch to collect postmarketing data.

FDA plans to use methods in addition to MedWatch to collect postmarketing data. FDA will encourage sponsors to obtain postmarketing use data and to assess the safety, effectiveness, tolerability, and patient acceptance of possible alternatives in postmarketing clinical studies. In particular, FDA will encourage sponsors to seek data regarding patient subpopulations not fully represented in premarketing clinical trials. FDA will also evaluate data on acceptance, device performance, tolerability, adverse events, and effectiveness by using postmarketing studies and postmarketing use and surveillance data, including but not limited to FDA's MedWatch data.

(Comment 30) One comment supported use of foreign postmarketing data in support of U.S. data.

FDA will consider foreign data supportive of U.S. postmarketing use data if U.S. and foreign formulations, patient populations, and clinical practices are the same or substantially similar.

(Comment 31) Two comments asked that FDA reduce the requirement for 1 year of U.S. postmarketing data if foreign postmarketing use data is sufficient to support a finding that a CFC–MDI is no longer essential. One comment asked that FDA permit the use of foreign data in combination with U.S. data to make a total of 1 year of postmarketing data.

In response to these comments, FDA has finalized § 2.125(g)(3)(iii) to require that adequate U.S. postmarketing data exist for the non-ODS product. FDA may find that less than 1 year is adequate if foreign data is relevant to the U.S. market. FDA notes that it is interested in the acceptability of a product in the U.S. population, its actual use in the United States, and its relation to other products marketed in the United States. Foreign data may be used to augment U.S. data when appropriate.

(Comment 32) One comment stated that FDA should use a longer than 1-year period to collect postmarketing data.

FDA is requiring adequate postmarketing data. This may mean more or less than 1 year, depending on the particulars of the product under consideration and the status of other alternatives.

(Comment 33) One comment stated that it does not support phase 4 studies in the postmarketing period. One comment supported FDA's postmarketing requirements, but asked that FDA clarify that postmarketing information need not necessarily be obtained through phase 4 studies. One comment supported the proposal that a postmarketing study not be required if other data are adequate to establish the acceptability of an alternative. PADAC members had differing points of view on the value of conducting formal postmarketing studies (Ref. 1, pp. 136 through 171 of the transcript).

In general, FDA does not anticipate that sponsors will need to conduct formal phase 4 studies in the postmarketing period to provide adequate postmarketing data. FDA does anticipate, however, that sponsors will need to collect some postmarketing data beyond standard postmarketing surveillance to determine the acceptability of an alternative.

(Comment 34) One comment asked that FDA retract its suggestion that new data, and possibly new clinical studies, may be required to ensure an additional level of proof of safety and effectiveness.

FDA will not require an additional level of proof of safety and effectiveness in evaluating alternatives. FDA makes a determination that a non-ODS product is safe and effective when FDA approves the product for marketing. The question of whether the non-ODS product is an acceptable alternative to an ODS-product is a separate question, which FDA will answer by using the criteria set forth in § 2.125(g).

F. Timing of Phaseout

(Comment 35) One comment requested that FDA accord priority review to NDAs for non-ODS products. One comment stated that non-ODS products should undergo expedited review.

The agency is committed to the timely review of all drug applications. FDA does not believe that NDAs for non-ODS replacement products meet the criteria for priority review at the current time.

(Comment 36) One comment stated that education is a very important part of the transition process and asked FDA to take a leadership role in continuing education.

FDA recognizes the need to educate patients, health care providers, and interested parties about the planned phaseout of CFC–MDIs for the transition to non-ODS products to occur as smoothly as possible. FDA has been involved in public education on this issue for the past several years. Members of the Center for Drug Evaluation and Research's Division of Pulmonary and Allergy Drug Products have made presentations and participated in panel discussions on the phaseout of CFCs at national scientific and professional society meetings and will continue to do so.

The division has also worked in close cooperation with the National Asthma Education and Prevention Program (NAEPP), an ongoing comprehensive program directed by the staff of the National Heart, Lung, and Blood Institute of NIH. NAEPP educates physicians, other health care providers, and patients about issues related to the prevention and treatment of asthma, including the phaseout of CFCs. The NAEPP Coordinating Committee formed a CFC Workgroup to educate patients and physicians about the CFC phaseout. The NAEPP CFC Workgroup, in cooperation with the International Pharmaceutical Aerosol Consortium, developed a ''fact sheet'' for patients entitled ''Your Metered-Dose Inhaler Will Be Changing * * * Here Are the Facts.'' The fact sheet is available on the Internet at http://www.fda.gov/cder/mdi/. The NAEPP CFC Workgroup is continuing to broaden its educational effort. FDA provides appropriate advice and assistance to the NAEPP CFC Workgroup.

FDA has also published articles on the phaseout of CFCs in FDA Consumer, Journal of the American Medical Association, and the FDA Medical Bulletin to educate health care providers and patients about FDA actions, or proposed actions, related to the transition to non-ODS inhalation products.

The agency views these educational efforts as a critical component of the transition process and intends to continue these efforts as the transition to non-ODS products moves forward.

(Comment 37) One comment asked that FDA work with others to outline clear deadlines and strategies for a complete transition to facilitate necessary patient and health care provider education. One comment stated that FDA should provide a detailed timeframe for the transition.

FDA understands that patients and health care providers are very interested in knowing exactly when the transition will be complete. However, FDA cannot provide an exact date at this time because the U.S. transition is largely dependent on the availability of alternative products. However, as described above, FDA will develop and participate in patient and health care provider education that is appropriate for each stage of the transition and as more information becomes available regarding the timing of the transition.

(Comment 38) One comment requested that FDA carefully prepare its regulatory materials; provide patient, medical professional, and public education; and allow ample opportunity for interaction with FDA advisory bodies and personnel before proposing removal of an essential-use designation for an active moiety without a non-ODS replacement containing that active moiety.

FDA plans to take all of these steps before proposing removal of an essential-use designation under § 2.125(g)(2) for an active moiety without a non-ODS replacement containing that moiety. FDA notes, however, that if an active moiety is no longer marketed in a CFC formulation, FDA will propose removal of the essential-use designation under § 2.125(g)(1) without necessarily taking the additional steps suggested in the comment.

(Comment 39) One comment asked that FDA reiterate that it will determine the effective date of the removal of an essential use from § 2.125 on a case-by-case basis.

FDA will determine the effective date of the removal of an essential use from § 2.125(e) on a case-by-case basis determined as a part of notice-and-comment rulemaking.

G. Nasal Steroids

(Comment 40) Three comments supported removal of the essential-use designations for nasal steroids. PADAC supported the removal of the essential-use designations for nasal steroids (Ref. 1, pp. 235 though 240 of the transcript).

In this final rule, FDA is eliminating the essential-use designations for nasal steroids. This means that after the applicability date of this rule, no ODS formulation of a nasal steroid may be sold or distributed, or offered for sale or distribution, in the United States (see 40 CFR 82.64(c) and 82.66(d)).

(Comment 41) One comment supported removal of nasal steroids generally, but noted that only one nasal steroid containing CFCs is approved to age 4 and asked that FDA not remove the essential use for this product.

In response to this comment, FDA has reviewed the labeling for nasal steroids. Fluticasone and mometasone, both available as non-ODS products, are labeled for children as young as ages 4 and 3, respectively. No CFC nasal products are approved for children as young as age 4. Therefore, FDA does not believe it is medically necessary to retain the essential use for any nasal steroid.

H. Incentives for Development of Alternatives

(Comment 42) One comment requested that FDA cooperate with other government entities to implement suggestions outside of its authority. The same comment asked FDA to seek changes to the Montreal Protocol if necessary to protect patient health.

FDA is working closely with EPA and with the Department of State to ensure that the transition is smooth. If FDA finds that patient health is at risk as the transition progresses, FDA will take steps within its own authority and will seek the assistance of other authorities to continue to protect patient health.

I. Cost of New Products

(Comment 43) One comment stated that cost should be a priority in determining whether non-ODS alternatives are adequate. One comment stated that economic impacts must be taken into account before removal of an

essential-use designation. One comment argued that FDA has not adequately assessed the impact on public health from removal of generic CFC–MDIs. Three comments stated that FDA should not consider cost in determining essentiality. PADAC members agreed generally that cost alone should not be a reason for retaining an essential use and that the United States should work to find a way to deliver appropriate drugs to people who cannot afford the medicine (Ref. 1, pp. 226 through 235 of the transcript).

FDA recognizes that cost is a concern for many patients and health care providers. In part due to considerations such as those raised in these comments, FDA is requiring that multiple-source CFC–MDI products be replaced by at least two non-ODS alternative products. FDA will also consider cost in determining whether alternatives meet patient needs. In addition, FDA expects that the price for most non-ODS products will approximate the price for branded CFC products. FDA bases this expectation on statements by manufacturers.

J. Environmental Impact of CFC–MDI Use

(Comment 44) One comment argued that the elimination of CFC–MDIs is not justified by the *de minimis* environmental benefit that will result.

The United States evaluated the environmental effect of eliminating the use of all CFCs in an environmental impact statement (EIS) in the 1970s (see 43 FR 11301, March 17, 1978). As part of that evaluation, FDA concluded that the continued use of CFCs in medical products posed an unreasonable risk of long-term biological and climatic impacts (see Docket No. 96N–0057). Congress later enacted provisions of the Clean Air Act that codified the decision to fully phase out the use of CFCs over time (see Title VI (enacted November 15, 1990)). FDA notes that the environmental impact of individual uses of nonessential CFCs must not be evaluated independently, but rather must be evaluated in the context of the overall use of CFCs. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7). Significance cannot be avoided by breaking an action down into small components (40 CFR 1508.27(b)(7)). Although it may appear to some that CFC–MDI use is only a small part of total ODS use and therefore should be exempted, the elimination of CFC use in MDIs is only one of many steps that are part of the overall phaseout of ODS use. If each small step were provided an exemption, the cumulative effect would be to prevent environmental improvements. FDA is merely fulfilling its obligation to make essential-use determinations for FDA-regulated products, in accordance with the Clean Air Act.

K. Generics

(Comment 45) Two comments stated that FDA should not eliminate an essential use unless a non-ODS generic is available for that essential use.

Only one CFC-MDI, albuterol, is available in a generic formulation. FDA is not requiring that more generics be available in non-ODS formulations than are available in CFC formulations. It would seem inappropriate to require the availability of a non-ODS generic drug product when there is no generic version currently on the market and we have no guaranty that a generic drug will ever be developed for any given active moiety. When generic products become available is dictated by manufacturers' decisions whether to produce a generic product, by U.S. patent laws, by the exclusivity provisions of the act, by the approvability of any particular generic drug application, and by the manufacturers' eligibility to receive ODSs under the Montreal Protocol and the Clean Air Act.

(Comment 46) Three comments said that FDA should not approve a new CFC-containing MDI drug product if the active moiety in the drug product is already marketed and appears on the essential-use list. Three comments stated that FDA should not approve generic versions of existing essential-use products. One comment stated that FDA should approve generic versions of existing essential-use products. One comment stated that patients will not be adversely affected in terms of out-of-pocket cost of medications or quality of life if approval of generic medications should cease. One comment said that FDA should not approve any new CFC-containing drug product unless it provides an unavailable important public health benefit. One comment requested that FDA require all new drug products to demonstrate clinically significant value before approval.

Section 505 of the act directs FDA to approve new drug and generic products if all of the requirements in the act are met. There is no exception in the act permitting FDA to refuse to approve new drug or generic products simply because they contain an ODS. Therefore, FDA will continue to approve new drug and generic applications that meet the current requirements of the act.

(Comment 47) One comment stated that FDA should require companies using essential-use designations to demonstrate that they are actively pursuing reformulation.

FDA is not requiring companies to demonstrate that they are actively pursuing reformulation to maintain the essential-use designation of their products. However, after January 1, 2005, FDA may propose to remove the essential-use designation for an active moiety even if it has not been reformulated.

L. New Essential Uses

(Comment 48) One comment supported the criteria in the proposed rule for the addition of new essential uses.

FDA is adopting the criteria for addition of new essential uses that it had proposed.

(Comment 49) One comment supported the compelling evidence standard generally but asked that FDA approve new essential uses if the product offers a compelling therapeutic benefit to a significant, albeit small, subpopulation.

FDA will consider adding a new essential use if the use is for a product that will provide an unavailable important public health benefit. FDA believes it is possible, under this criterion, for a product that offers a compelling therapeutic benefit for a significant, albeit small, subpopulation to qualify for an essential use. FDA would carefully evaluate any evidence in support of such an essential use.

M. Additional Comments

(Comment 50) Three comments supported changing the designation of ODS products not listed from adulterated and misbranded to nonessential. One comment asked that FDA revoke the statements made in the preamble to the proposed rule regarding the continued applicability of the adulterated and misbranded provisions of the act. One comment stated that FDA should retain the express authority to find a nonessential product adulterated or misbranded if it contains CFCs.

The agency is amending § 2.125 to state that a product in a self-pressurized container that contains an ODS is not essential. This change should not be interpreted to mean that FDA no longer believes that such products are adulterated and/or misbranded. Such nonessential products are adulterated and/or misbranded under certain act provisions, including sections 402, 403, 409, 501, 502, 601, and 602 of the act (21 U.S.C. 342, 343, 348, 351, 352, 361, and 362). The basis for FDA's authority

to declare such products adulterated and/or misbranded is discussed in the preambles for § 2.125 and related rules and proposed rules (see 43 FR 11301, March 17, 1978; 42 FR 24536, May 13, 1977; 42 FR 22018, April 29, 1977; and 41 FR 52071, November 26, 1976). However, FDA is changing the regulation to conform to the authority delegated to it under the Clean Air Act. FDA notes that EPA is responsible for enforcement of the Clean Air Act.

(Comment 51) One comment argued that the transition will force patients to abandon safe and effective products.

FDA is finalizing this rule to fulfill its responsibilities under the Clean Air Act. Although it is true that CFC–MDIs are safe and effective as approved, CFCs also deplete the ozone layer which has a detrimental effect on the public health and the environment. The United States has determined that, as a result, CFC–MDIs should be phased out.

(Comment 52) One comment asked for clarification on whether elimination of an essential use from § 2.125 would prohibit use of stockpiled CFCs.

This comment raises questions under the Clean Air Act. Under 40 CFR 82.64(c), no person may sell or distribute, or offer to sell or distribute, in interstate commerce any nonessential product. Under 40 CFR 82.66(d), any aerosol product or other pressurized dispenser that contains a CFC is a nonessential product. Medical devices listed in § 2.125(e) are exempted from this prohibition (40 CFR 82.66(d)(2)(i)). However, once a medical device is removed from the listing in § 2.125(e), it can no longer be marketed (40 CFR 82.64(c)). FDA notes that it plans to include an implementation period once the agency determines that a use is no longer essential. The length of this implementation period will be determined through the notice-and-comment rulemaking in which the essential use is eliminated.

(Comment 53) One comment stated that FDA must comply with Executive Order 12898 on environmental justice.

Executive Order 12898 requires agencies to identify and address disproportionately high adverse human health or environmental effects on minority populations and low-income populations. As discussed in the economic analysis prepared for this rule, the agency does not anticipate that this final rule will have any adverse effects on human health or the environment (see section VII of this document).

(Comment 54) One comment stated that FDA must comply with Executive Order 12866 on economic and social cost-benefit assessments.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. The agency has complied with this requirement to the extent necessary (see section VII of this document).

(Comment 55) One comment stated that FDA must comply with Executive Order 12630 on effects on private property. One comment argued that the government cannot preclude the use of stockpiled CFCs because to do so would result in a taking.

Executive Order 12630 requires government agencies to evaluate whether a regulation has any takings implications. FDA does not believe that this regulation has any takings implications. This regulation simply sets the standard FDA will use to determine whether an ODS use remains essential. The Clean Air Act then prevents marketing of those ODS-containing products. The use of stockpiled CFCs is governed by the Clean Air Act.

(Comment 56) One comment stated that FDA needs to complete an EIS under the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347).

FDA has complied with NEPA. The agency has evaluated the environmental effects of eliminating ODS-containing products and provided opportunities for public comment on these issues. An EIS was prepared on this issue (see 43 FR 11301, March 17, 1978). In addition, environmental assessments (EAs) were prepared in conjunction with the NDA approval process for products that are viewed as alternatives to metered-dose steroid drugs for nasal inhalation containing ODSs. Finally, FDA issued both an ANPRM (62 FR 10242) and a proposed rule (64 FR 47719) as part to this rulemaking. Both of these documents discuss the environmental effects of eliminating ODS-containing products. The agency received large numbers of comments and responded to them in the proposed rule or this document. This document further discusses the environmental effect of eliminating ODS- containing products.

Furthermore, those portions of the rule that set out the processes for adding new essential uses and for determining that existing uses are no longer essential are covered by a categorical exclusion from NEPA's requirements. Section 25.30(h) of FDA's NEPA regulations (21 CFR 25.30(h)) provides that the ''[i]ssuance, amendment, or revocation of procedural or administrative regulations * * *'' does not require the preparation of an EIS or an EA. Finally, in the future, when FDA undertakes rulemaking to add or remove an essential use, the agency will prepare an EA and/or an EIS if required by NEPA.

However, to ensure that the public is given the fullest opportunity to comment on this rulemaking, interested parties may submit comments on the environmental effects of removing the essential-use designations for products that are no longer being marketed and for metered-dose steroid drugs for nasal inhalation for a period of 30 days after publication of this rule. Unless the agency receives a comment that leads it to believe that a change in the rule is appropriate, the effective date of this rule will be January 20, 2003.

(Comment 57) One comment asked that FDA revise the proposal to clarify that the nonessentiality determination applies only to products marketed in the United States and not to exports.

FDA is not revising § 2.125 to reflect that the nonessentiality determination applies only to products in the United States and not to exports because the act has specific provisions that address when a product that would otherwise be adulterated and misbranded may still be exported. Under section 801(e)(1) of the act (21 U.S.C. 381(e)(1)):

> A food, drug, device, or cosmetic intended for export shall not be deemed to be adulterated or misbranded under this Act if it—
>
> (A) accords to the specifications of the foreign purchaser,
>
> (B) is not in conflict with the laws of the country to which it is intended for export,
>
> (C) is labeled on the outside of the shipping package that it is intended for export, and
>
> (D) is not sold or offered for sale in domestic commerce.

A manufacturer seeking to export nonessential products could do so under the act so long as the products for export met the requirements of section 801 of the act.

FDA has consulted with EPA to determine whether EPA rules currently allow export of nonessential products. FDA understands that current EPA rules do not allow such export. However, depending on the pace of transition in other countries and their possible continued short-term need to have a small amount of additional time to effectuate their timely and thoughtful phaseout, EPA may consider changing its rule at some future date.

(Comment 58) One comment argued that the Clean Air Act requires notice-and-comment rulemaking for addition of each drug product rather than each moiety.

Section 601(8) of the Clean Air Act states that each ''medical device'' must

have been determined to be essential. The section defines ''medical device'' as ''any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system * * *.'' Section 201(g)(1) of the act defines ''drug'' as:

(A) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and

(B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and

(C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

(D) articles intended for use as a component of any article specified in clause (A), (B), or (C).

* * *

This definition permits the word ''drug'' to be read to mean either ''drug product,'' ''drug substance'' or ''active moiety.'' FDA has read the word drug to have a specific meaning depending on the context in which it is used. In this case, FDA believes it is appropriate to read the word ''drug'' to mean ''active moiety.''

(Comment 59) Two comments stated that neither the Clean Air Act nor the Montreal Protocol requires an eventual end to any and all essential uses of CFCs within the United States.

In light of these comments, FDA has revisited the text of the Clean Air Act, its legislative history, the text of the Montreal Protocol, and decisions by the Parties to the Protocol. FDA also further discussed its understanding of the Clean Air Act and the Protocol with the EPA.

The text of the Clean Air Act states that EPA will, after notice and opportunity for public comment and ''to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of class I substances solely for use in medical devices * * *.'' (section 604(d)(2) of the Clean Air Act). The Clean Air Act does not state specifically whether such essential-use exemptions may continue indefinitely or must terminate at some future time. However, the legislative history for this section of the Clean Air Act makes it clear that the exemption is only permitted for a limited time. The Senate Conference Report for this section of the Clean Air Act states:

The Administrator [of EPA] is authorized on a conditional basis to grant limited extensions of the termination date for production of limited quantities of class I substances, to the extent such action is consistent with the Montreal Protocol for: * * * medical devices; * * *.

* * * * *

The centerpiece of the stratospheric ozone protection program established by this title is the phaseout of production and consumption of all ozone depleting substances.

(136 Cong. Rec. S16895 at 16946 and 16947 (daily ed. Oct. 27, 1990).)

These statements are consistent with the Montreal Protocol. The Preamble to the Protocol states that the Parties are:

Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, *with the ultimate objective of their elimination* on the basis of developments in scientific knowledge, taking into account technical and economic considerations and bearing in mind the developmental needs of developing countries.

(Preamble to the Montreal Protocol (emphasis added).)

Decision IV/25 of the Protocol also indicates that essential-use exemptions are temporary. This decision asks the Technology and Economic Assessment Panel to determine an estimated duration for each essential use, the steps necessary to ensure alternatives are available as soon as possible, and whether previously qualified essential uses should no longer qualify as essential.

Finally, FDA confirmed with EPA that it is also their understanding that the Clean Air Act and the Montreal Protocol do not permit essential-use exemptions to continue forever.

Thus, although it is true that there is no set date for termination of essential-use exemptions, it is also clear that the exemptions will not exist forever.

V. Legal Authority

This final rule to determine when FDA-regulated products using ODSs are essential is authorized by the Clean Air Act. EPA regulations implementing the provisions of section 610 of the Clean Air Act contain a general ban on the use of CFCs in pressurized dispensers (40 CFR 82.64(c) and 82.66(d)). The Clean Air Act and EPA regulations exempt from the general ban ''medical devices'' that FDA considers essential and that are listed in § 2.125(e) (section 610(e) of the Clean Air Act; 40 CFR 82.66(d)(2)). Section 601(8) of the Clean Air Act defines ''medical device'' as any device (as defined in the act), diagnostic product, drug (as defined in the act), and drug delivery system, if such device, product, drug, or drug delivery system uses a class I or class II ODS for which no safe and effective alternative has been developed (and, where necessary, approved by the Commissioner of Food and Drugs (the Commissioner)); and if such device, product, drug, or drug delivery system has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator of EPA (the Administrator). Class I substances include CFCs, halons, carbon tetrachloride, methyl chloroform, methyl bromide, and other chemicals not relevant to this document (see 40 CFR part 82, appendix A to subpart A). Class II substances include hydrochlorofluorocarbons (see 40 CFR part 82, appendix B to subpart A).

Essential-use products are listed in § 2.125(e). Although § 2.125 includes a mechanism for adding essential-use products to the regulations, the regulations do not include a mechanism for removing products from the essential-use list. This rule provides a mechanism for FDA to remove products from the essential-use list in an orderly and rational fashion.

EPA has reviewed this rule and agrees with its issuance.

VI. Implementation Plan

This final rule is effective January 20, 2003. After January 20, 2003, FDA will evaluate products on the essential-use list according to the criteria set forth in the rule. As the criteria for eliminating essential uses are met, FDA will publish proposals to eliminate essential uses for the appropriate individual active moieties. FDA intends that such proposals will be published and finalized in an expeditious manner.

VII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs regulatory agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Unless the agency certifies that the rule is not expected to have a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact on small entities. Section 202 of the Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any

rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million in any one year (adjusted annually for inflation). The agency has determined that the final rule is consistent with the principles set forth in the Executive order and in these statutes. The final rule will not result in costs in excess of $100 million and therefore no further analysis is required under the Unfunded Mandates Reform Act. In addition, FDA certifies that this regulation would not result in a significant economic impact on a substantial number of small entities. Thus, the agency need not prepare a final regulatory flexibility analysis.

FDA published a detailed analysis of impacts when this regulation was proposed in September 1, 1999 (64 FR 47719). No further information has been submitted that would alter the findings of the analysis submitted with the proposed regulation.

FDA is removing the essential-use designation for metered-dose steroid human drugs for nasal inhalation. Four manufacturers market CFC-nasal inhalation products, which constitute a small proportion of the nasal inhalation product market. The affected CFC containing drug products contain either beclomethasone, budesonide, or triamcinolone. All three active moieties are also marketed in non-CFC formulations by the same manufacturers of the CFC nasal inhalation products. Several other steroid human drugs for nasal inhalation are marketed in non-CFC formulations. These drug products provide therapeutic alternatives to the CFC containing products.

FDA is also removing the essential-use designations for drug products that are either no longer being marketed or are no longer being marketed in a formulation containing ozone depleting substances.

In addition to removing these essential uses, this regulation articulates the standards used by FDA to determine whether the use of ozone-depleting substances in metered dose inhalers remains essential under the Clean Air Act. The regulation has limited direct economic impact because it primarily establishes the criteria FDA would use to make essential use determinations. However, future application of the procedure described in this regulation will generate both regulatory benefits and costs. FDA has discussed the potential nature of these impacts with the proposed rule and briefly describes them below.

A. Regulatory Benefits

The benefits of the procedure described in this regulation are the environmental gains associated with the diminished use of ozone-depleting substances in medical products. The Environmental Protection Agency has estimated (in prior regulatory analyses) that the aggregate public health benefit of phasing out the use of ozone-depleting substances due to reduced cases of skin cancer, cataracts and other health effects ranges between $8 and $32 trillion. FDA has crafted the procedure described in this regulation to achieve a small fraction of these benefits while maintaining adequate supplies of reformulated products for patients treated for asthma and COPD. Most important, the regulation ensures that adequate supplies of reformulated products with comparable therapeutic roles are available prior to rescission of an essential use designation. Although FDA cannot speak with certainty about future events, the agency does not anticipate that significant decreases in purchases of non-ODS alternatives, as compared to purchases of CFC–MDIs, will occur after an essential-use exemption is removed under the procedures set forth in this rule.

Similarly, removal of essential-use designations for steroid nasal inhalation products would not affect the public health. Adequate supplies of reformulated products with comparable therapeutic roles exist with prices that are approximately the same as the CFC products on a dose basis.

B. Regulatory Costs

FDA considers the costs of reformulation to be direct consequences of the statutory requirements of the Clean Air Act rather than forthcoming FDA regulatory activity. Sponsors who elect to reformulate their products may incur costs to collect detailed clinical data, but FDA has no empirical information to confirm the extent of these costs. Manufacturers are well aware of the mandate to eliminate ozone-depleting substances and are already engaged in the development of reformulated products.

The same manufacturers that currently market steroid nasal inhalation products containing CFCs also market non-CFC alternatives. Thus, FDA does not anticipate a regulatory cost due to this regulation.

FDA realizes that the future elimination of essential-use exemptions could have significant distributional and regulatory impacts on various economic sectors. The agency will prepare detailed analyses of impacts as part of each of these future rulemakings. The role that the Montreal Protocol and the Clean Air Act will play in the eventual prohibition of the production or importation of ODSs must also be kept in mind.

C. Distributive Impacts

Potential distributive impacts will not be triggered until the completion of future rulemaking on each specific product currently using ozone-depleting substances. FDA plans on conducting specific market analyses to determine the approximate magnitude of these effects prior to removing essential use designations for specific products.

The agency recognizes that generic albuterol CFC-MDIs are currently marketed and that these products cost less than currently marketed albuterol sulfate MDI's which use hydrofluoroalkane (HFA) as a propellant. At the appropriate time, FDA will evaluate the essential-use status of albuterol under criteria established by this rule. In determining whether patients are adequately served by non-ODS products containing albuterol as the active moiety, FDA will consider the cost of potential alternatives, such as the albuterol sulfate HFA-MDIs.

The agency does not believe that cost will be a significant factor in determining whether patients are adequately served by non-ODS products containing active moieties other than albuterol. There are currently no generic versions for these other products and FDA expects that the price for most non-ODS products will approximate the price for branded CFC products. FDA bases this expectation on statements by manufacturers.

FDA does not anticipate distributive impacts due to the removal of essential-use designations for steroid nasal inhalation products. The same manufacturers also currently market substitute, non-CFC products at approximately the same price.

D. Small Business Impact

FDA conducted an interim Regulatory Flexibility Analysis that resulted in a determination that this regulation would not have a significant economic impact on a substantial number of small entities. This analysis was included with the proposed regulation (64 FR 47719). There are relatively few small manufacturers of products that could potentially be affected. In addition, pharmaceutical wholesalers and retailers are unlikely to be significantly affected because this regulation will affect only a few of the thousands of products sold by these firms. FDA

received no comments on the interim analysis. FDA also notes that this regulation simply articulates a procedure that will be used in the future to assess whether or not ozone-depleting substances in metered dose inhalers are essential.

FDA further certifies that the removal of essential-use designations for steroid nasal inhalation products that contain CFCs will not have a significant impact on a substantial number of small entities. The four affected manufacturers currently market alternative products at comparable prices. Therefore no net impact is expected from this regulation.

VIII. The Paperwork Reduction Act of 1995

This final rule does not require information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Section 2.125(f) provides that a person may seek to add or remove an essential use listed under § 2.125(e) by filing a petition under part 10 (21 CFR part 10). Section 10.30(b) requires that a petitioner submit to the agency a statement of grounds, including the factual and legal grounds on which the petitioner relies. Section 2.125(f) describes the factual grounds necessary to document a petition to add or remove an essential use, as required by § 10.30(b). The burden hours required to provide the factual grounds for a petition have been calculated under § 10.30 and have been approved under OMB control number 0910–0183, which expires on February 28, 2003 (see 65 FR 12014, March 7, 2000).

IX. Reference

The following reference has been placed on display in the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The reference may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Food and Drug Administration, Center for Drug Evaluation and Research, Pulmonary and Allergy Drugs Advisory Committee Transcript, Friedman & Associates, November 22, 1999.

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Devices, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Clean Air Act and under authority delegated to the Commissioner of Food and Drugs, after consultation with the Administrator of the Environmental Protection Agency, 21 CFR part 2 is amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 is revised to read as follows:

Authority: 15 U.S.C. 402, 409; 21 U.S.C. 321, 331, 335, 342, 343, 346a, 348, 351, 352, 355, 360b, 361, 362, 371, 372, 374; 42 U.S.C. 7671 *et seq.*

2. Section 2.125 is revised to read as follows:

§ 2.125 Use of ozone-depleting substances in foods, drugs, devices, or cosmetics.

(a) As used in this section, *ozone-depleting substance* (ODS) means any class I substance as defined in 40 CFR part 82, appendix A to subpart A, or class II substance as defined in 40 CFR part 82, appendix B to subpart A.

(b) Except as provided in paragraph (c) of this section, any food, drug, device, or cosmetic that is, consists in part of, or is contained in an aerosol product or other pressurized dispenser that releases an ODS is not an essential use of the ODS under the Clean Air Act.

(c) A food, drug, device, or cosmetic that is, consists in part of, or is contained in an aerosol product or other pressurized dispenser that releases an ODS is an essential use of the ODS under the Clean Air Act if paragraph (e) of this section specifies the use of that product as essential. For drugs, including biologics and animal drugs, and for devices, an investigational application or an approved marketing application must be in effect, as applicable.

(d) [Reserved]

(e) The use of ODSs in the following products is essential:

(1) *Metered-dose corticosteroid human drugs for oral inhalation.* Oral pressurized metered-dose inhalers containing the following active moieties:

(i) Beclomethasone.

(ii) Dexamethasone.

(iii) Flunisolide.

(iv) Fluticasone.

(v) Triamcinolone.

(2) *Metered-dose short-acting adrenergic bronchodilator human drugs for oral inhalation.* Oral pressurized metered-dose inhalers containing the following active moieties:

(i) Albuterol.

(ii) Bitolterol.

(iii) Metaproterenol.

(iv) Pirbuterol.

(v) Epinephrine.

(3) [Reserved]

(4) *Other essential uses.* (i) Metered-dose salmeterol drug products administered by oral inhalation for use in humans.

(ii) Metered-dose ergotamine tartrate drug products administered by oral inhalation for use in humans.

(iii) Anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application.

(iv) Metered-dose cromolyn sodium human drugs administered by oral inhalation.

(v) Metered-dose ipratropium bromide for oral inhalation.

(vi) Metered-dose atropine sulfate aerosol human drugs administered by oral inhalation.

(vii) Metered-dose nedocromil sodium human drugs administered by oral inhalation.

(viii) Metered-dose ipratropium bromide and albuterol sulfate, in combination, administered by oral inhalation for human use.

(ix) Sterile aerosol talc administered intrapleurally by thoracoscopy for human use.

(f) Any person may file a petition under part 10 of this chapter to request that FDA initiate rulemaking to amend paragraph (e) of this section to add an essential use. FDA may initiate notice-and-comment rulemaking to add an essential use on its own initiative or in response to a petition, if granted.

(1) If the petition is to add use of a noninvestigational product, the petitioner must submit compelling evidence that:

(i) Substantial technical barriers exist to formulating the product without ODSs;

(ii) The product will provide an unavailable important public health benefit; and

(iii) Use of the product does not release cumulatively significant amounts of ODSs into the atmosphere or the release is warranted in view of the unavailable important public health benefit.

(2) If the petition is to add use of an investigational product, the petitioner must submit compelling evidence that:

(i) Substantial technical barriers exist to formulating the investigational product without ODSs;

(ii) A high probability exists that the investigational product will provide an unavailable important public health benefit; and

(iii) Use of the investigational product does not release cumulatively significant amounts of ODSs into the atmosphere or the release is warranted in view of the high probability of an unavailable important public health benefit.

(g) Any person may file a petition under part 10 of this chapter to request

that FDA initiate rulemaking to amend paragraph (e) of this section to remove an essential use. FDA may initiate notice-and-comment rulemaking to remove an essential use on its own initiative or in response to a petition, if granted. If the petition is to remove an essential use from paragraph (e) of this section, the petitioner must submit compelling evidence of any one of the following criteria:

(1) The product using an ODS is no longer being marketed; or

(2) After January 1, 2005, FDA determines that the product using an ODS no longer meets the criteria in paragraph (f) of this section after consultation with a relevant advisory committee(s) and after an open public meeting; or

(3) For individual active moieties marketed as ODS products and represented by one new drug application (NDA):

(i) At least one non-ODS product with the same active moiety is marketed with the same route of administration, for the same indication, and with approximately the same level of convenience of use as the ODS product containing that active moiety;

(ii) Supplies and production capacity for the non-ODS product(s) exist or will exist at levels sufficient to meet patient need;

(iii) Adequate U.S. postmarketing use data is available for the non-ODS product(s); and

(iv) Patients who medically required the ODS product are adequately served by the non-ODS product(s) containing that active moiety and other available products; or

(4) For individual active moieties marketed as ODS products and represented by two or more NDAs:

(i) At least two non-ODS products that contain the same active moiety are being marketed with the same route of delivery, for the same indication, and with approximately the same level of convenience of use as the ODS products; and

(ii) The requirements of paragraphs (g)(3)(ii), (g)(3)(iii), and (g)(3)(iv) of this section are met.

Dated: April 15, 2002.

Lester M. Crawford,

Deputy Commissioner.

[FR Doc. 02–18610 Filed 7–18–02; 3:38 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 523

[BOP–1106–F]

RIN 1120–AB05

District of Columbia Educational Good Time Credit

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) describes procedures for awarding educational good time credit consistent with D.C. Code § 24–221.01 (DCEGT). This rule will apply to D.C. Code offenders in Bureau institutions or Bureau contract facilities under the National Capital Revitalization and Self-Government Improvement Act of 1997 (D.C. Revitalization Act), D.C. Code § 24–101(b), who committed their offenses before August 5, 2000. Through this rule, we will allow inmates sentenced under the D.C. Code to retain benefits permitted by the D.C. Code while fulfilling our statutory mandate to provide for their custody consistent with the sentence imposed.

DATES: This rule is effective on July 24, 2002. Comments are due by September 23, 2002.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

What Will This Rule Do?

Through this rule, the Bureau of Prisons (Bureau) will add a subpart D to its regulations in 28 CFR part 523, on Computation of Sentence. The new subpart D will establish procedures for awarding educational good time credit consistent with D.C. Code § 24–221.01. (We refer to educational good time credit consistent with the D.C. Code as ''DCEGT.'')

This rule will apply to D.C. Code offenders who committed their offense before August 5, 2000 and are in Bureau institutions or Bureau contract facilities under the D.C. Revitalization Act.

Why Are We Making This Rule?

We are making this rule to comply with the D.C. Revitalization Act, enacted August 5, 1997. This Act makes the Bureau responsible for the ''custody, care, subsistence, education, treatment and training'' of ''the felony population sentenced pursuant to the District of Columbia Code'' (D.C. Code offenders). (D.C. Code § 24–101(b)) D.C. Code offenders in Bureau custody are subject to Federal laws and Bureau regulations as long as they are ''consistent with the sentence imposed.''

In August of 1997, when the D.C. Revitalization Act was enacted, the Bureau began absorbing approximately 8000 D.C. Code offenders. It was unclear at that time to what extent, if any, the Bureau would be bound by D.C. Code legislation which purported to direct Bureau functions.

As numerous D.C. Code provisions were analyzed for applicability to Bureau functions, it was generally concluded that the Bureau would have to follow D.C. Code sentence calculation provisions (e.g., good time, jail credit, etc.) to the extent non-compliance would result in an ex post facto violation of the offender's sentence. The Bureau based this approach on the provision in D.C. Revitalization Act requiring the Bureau to apply Federal laws to D.C. Code offenders ''consistent with the sentence imposed.''

The Bureau concluded that D.C. Code offenders who committed their offenses before August 5, 2000 are entitled to educational good time sentence credit. As a result, we developed these rules to give effect to the D.C. Code educational good time sentence credit (DCEGT) provisions in the Bureau's education and sentence calculation systems.

Section 24–221.01 of the D.C. Code provides for ''educational good time credits of no less than 3 days a month and not more than 5 days a month'' when a D.C. Code offender completes an educational program and obeys institution rules. This provision applies when a D.C. Code offender completes an educational program on or after April 11, 1987, when section 24–221.01 was enacted.

Section 24–403.01(d) of the D.C. Code, enacted April 23, 1998, however, requires that D.C. Code offenders who committed their offense on or after August 5, 2000, receive good time credit ''only as provided in 18 U.S.C. 3624(b).'' This statute in the Federal Criminal Code directs the Bureau how to award good time credit to U.S. Code offenders. Bureau regulations implementing this provision are in 28 CFR 523.20.

D.C. Code offenders who successfully complete an educational program on or after April 11, 1987, and who committed their offense before August 5, 2000, may receive educational good time credit consistent with D.C. Code

§ 24–221.01 (DCEGT). By contrast, D.C. Code offenders who commit their offense on or after August 5, 2000, are eligible for good time credit only under the Federal law, 18 U.S.C. 3624(b).

To be ''consistent with the sentence imposed,'' as required by the D.C. Revitalization Act (D.C. Code § 24–101(b)), the Bureau developed these rules on DCEGT to conform with D.C. law on DCEGT in D.C. Code § 24–221.01.

How Do These Rules Work?

The rules describe eligibility for DCEGT, how we award it, how we limit it, and how to appeal our decisions on DCEGT. We will allow 5 days of DCEGT for each calendar month that a D.C. offender is enrolled in a Bureau-designated education program. Eligible D.C. offenders can earn DCEGT up to a Bureau-determined maximum amount, which varies for different types of educational programs.

Why Is This an Interim Final Rule?

We are making this an interim final rule for the following reasons:

As a result of National Capital Revitalization and Self-Government Improvement Act of 1997 (D.C. Revitalization Act), D.C. Code § 24–101(b), passed August 5, 1997, we are responsible for administering the sentences of D.C. Code offenders in our custody, including DCEGT awards.

Since the D.C. Revitalization Act's enactment on August 5, 1997, D.C. Code offenders in Bureau custody may have completed educational programs designated by these rules as eligible for DCEGT.

If we do not implement this rule as soon as possible, inmates eligible for DCEGT risk being considered parole eligible at a later date than if the credit were awarded. Also, for D.C. Code offenders projected for mandatory release, an award of DCEGT may affect their release date.

Therefore, to insure that D.C. Code offenders in our custody receive the benefit of DCEGT, these rules must take effect as soon as possible. Having a DCEGT system in place also provides eligible offenders incentive to pursue educational programming, which may ultimately help them re-adjust to the community.

Where To Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534.

We will consider comments we receive during the comment period before we take final action. We will try to consider comments we receive after the end of the comment period. In light of comments we receive, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments we receive remain on file for public inspection at the above address.

Executive Order 12866

The Office of Management and Budget (OMB) determined that certain rules are part of a category of actions which are not ''significant regulatory actions'' under section 3(f) of Executive Order 12866. Because this rule falls within that category, OMB did not review it.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make Bureau documents easier to read and understand. If you can suggest how to improve the clarity of these regulations, call or write to Sarah Qureshi at the address or telephone number listed above.

List of Subjects in 28 CFR Part 523

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend part 523 in subchapter B of 28 CFR, chapter V as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 523—COMPUTATION OF SENTENCE

1. The authority citation for 28 CFR part 523 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3568 (Repealed November 1, 1987 as to offenses committed on or after that date), 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166, (repealed October 12, 1984, as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Add Subpart D, consisting of §§ 523.30 through 523.34, to read as follows:

Subpart D—District of Columbia Educational Good Time Credit

Sec.

Subpart D—District of Columbia Educational Good Time Credit

§ 523.30 What is educational good time sentence credit?

Educational good time sentence credit is authorized by District of Columbia (D.C.) Code § 24–221.01, and reduces the amount of time to serve under a term of imprisonment. In these rules, we refer to D.C. educational good time as ''DCEGT.''

§ 523.31 Who is eligible for DCEGT?

You are eligible for DCEGT if:

(a) You are incarcerated in a Bureau of Prisons' (Bureau) institution or a Bureau contract facility;

(b) You are serving a term of imprisonment for a D.C. criminal code violation committed before August 5, 2000;

(c) Your Unit Team approved or designed a plan for you to complete a program designated by the Bureau as eligible for DCEGT;

(d) The Supervisor of Education (SOE) finds that you successfully completed a Bureau-designated education program on or after August 5, 1997; and

(e) You did not violate prison discipline rules while enrolled in the program (see § 523.33).

§ 523.32 How much DCEGT can I earn?

(a) You can earn 5 days DCEGT for each month you were enrolled in a designated program, up to the maximum amount designated by the Bureau for the type of program successfully completed.

(b) You are limited to 5 days per month DCEGT, even if enrolled in more than one designated program.

(c) Enrollment in a designated program for any portion of a calender month earns one full month's worth of DCEGT.

(d) You are not eligible for DCEGT which, if awarded, would make you past due for release.

(e) Once appropriately awarded, DCEGT vests, and cannot be forfeited.

§ 523.33 How is eligibility for DCEGT limited?

Eligibility for DCEGT is limited in two ways:

(a) If you violate prison rules, you are not eligible for one month's worth of DCEGT for each disciplinary incident committed during the program enrollment period. A Discipline Hearing Officer, or other staff using procedures similar to those in 28 CFR 541.17, must determine that you committed a prohibited act.

(b) The nature of your offense may limit your eligibility for DCEGT under D.C. Code 24–221.01b or 24–221.06.

§ 523.34 How can I challenge DCEGT award decisions?

You can use the Administrative Remedy Program, 28 CFR 542.10 through 542.19, to challenge Bureau of Prisons decisions regarding DCEGT.

[FR Doc. 02–18625 Filed 7–23–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Internal Revenue Service; Privacy Act, Implementation

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury gives notice of a final rule to exempt an Internal Revenue Service system of records entitled ''Employee System Protection Records-Treasury/IRS 60.000'' from certain provisions of the Privacy Act.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Chief, Office of Employee Protection, Internal Revenue Service, 477 Michigan Avenue, Detroit, Michigan 48226, telephone (313) 628–3742. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Department of the Treasury published a notice of a proposed rule exempting a system of records from certain provisions of the Privacy Act of 1974, as amended. The Internal Revenue Service (IRS) published the system notice in its entirety at 66 FR 59839–59841 (November 30, 2001), and the proposed rule in the same **Federal Register** on pages 59754–59755.

Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, as amended, if the system is investigatory material compiled for law enforcement purposes. The Employee Protection System Records-Treasury/IRS 60.000, contains investigatory material compiled for law enforcement purposes.

The proposed rule requested that public comments be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224, CL:GLD:D, no later than December 31, 2001.

The IRS did not receive comments on the proposed rule. Accordingly, the Department of the Treasury is hereby giving notice that the system of records entitled ''Employee Protection System Records-Treasury/IRS 60.000,'' is exempt from certain provisions of the Privacy Act. The provisions of the Privacy Act from which exemption is claimed pursuant to 5 U.S.C. 552a(k)(2) are as follows: 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f).

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this final rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, Subpart C of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 paragraph (g)(1)(viii) is amended by adding the following text to the table in numerical order.

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(g) * * *

(1) * * *

(viii) * * *

System No.	Name of system
* *	* * * *
IRS 60.000	Employee Protection System Records
* *	* * * *

Dated: July 2, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 02–18706 Filed 7–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA30

Financial Crimes Enforcement Network; Rescission of Exemption From Bank Secrecy Act Regulations for Sale of Variable Annuities

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice of rescission of exemption.

SUMMARY: FinCEN is announcing today that it is rescinding an exemption from the provisions of the Bank Secrecy Act regulations granted in 1972 to persons required to register as brokers or dealers in securities (''broker-dealers'') solely to permit the sale of variable annuities contracts issued by life insurance companies. This action is being taken in order to ensure consistency with USA PATRIOT ACT provisions mandating extension of Bank Secrecy Act requirements to a broad range of financial institutions.

DATES: Effective Date: August 23, 2002.

FOR FURTHER INFORMATION CONTACT: Peter G. Djinis, Executive Assistant Director for Regulatory Policy, FinCEN, at (703) 905–3930; Judith R. Starr, Chief Counsel, Cynthia L. Clark, Deputy Chief Counsel, and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332 (the ''BSA''), authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 *et seq.*) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

II. FinCEN Issuance 2002–1

This document, FinCEN Issuance 2002–1, rescinds an exemption from the provisions of 31 CFR part 103 granted to persons registered with the Securities and Exchange Commission as broker-dealers solely in order to offer and sell variable annuity contracts issued by life insurance companies. The background and purpose of the rescission are explained below.

The definition of ''financial institution'' for BSA purposes, found at 31 CFR 103.11(n), includes ''a broker or dealer in securities.'' [2] BSA regulations further define the term ''broker or dealer in securities'' to include a ''broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.[3] Because variable annuity contracts fall within the definition of ''security'' under the federal securities laws, life insurance companies wishing to sell variable annuity contracts must register as broker-dealers under the Securities Exchange Act of 1934, and thus fall under the definition of ''broker or dealer in securities'' found in 31 CFR part 103.

In response to a request from the American Life Convention—Life Insurance Association of America, Treasury in 1972 granted an exemption from the provisions of 31 CFR part 103 to persons registered with the Securities and Exchange Commission as broker-dealers solely in order to offer and sell variable annuity contracts issued by life insurance companies.[4] However, given the Congressional mandate found in the USA PATRIOT ACT to extend to all entities defined as financial institutions under the BSA the requirement to establish an anti-money laundering program (*See* Section 352(a) of the USA PATRIOT ACT), and to extend suspicious activity reporting to broker-dealers (*See* Section 356 of the USA PATRIOT ACT), FinCEN believes that it is now appropriate to rescind this exemption pursuant to 31 CFR 103.86.

On December 31, 2001, FinCEN published a notice of proposed rulemaking (the ''Notice''), 66 FR 67670, that would extend to broker-dealers the requirement to report suspicious transactions to the Department of the Treasury. In the Notice, FinCEN indicated that it anticipated that the exemption relating to variable annuity contracts issued by life insurance companies would be rescinded on the effective date of the final rule based on the Notice.[5] A final rule based on the Notice was published in the **Federal Register** on July 1, 2002.[6] FinCEN did not receive any adverse comments on the issue of rescinding the exemption. However, in response to a comment, FinCEN wishes to clarify that rescission of the exemption extends BSA coverage only to the activity of a life insurance company requiring the company to register with the SEC as a broker-dealer, and not to all activity of the life insurance company.

Thus, a person registered with the SEC as a broker-dealer solely to offer and sell variable annuity contracts issued by life insurance companies is subject to all applicable BSA requirements, including the requirement to file reports of suspicious activity, to the extent they offer and sell such contracts.

Dated: July 15, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–18612 Filed 7–23–02; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket #: OR–01–006a; FRL–7240–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: OR; Medford Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to Oregon's State Implementation Plan (SIP) which were submitted on May 31, 2001. These revisions consist of the 1993 carbon monoxide (CO) base/attainment year emissions inventory for Medford, Oregon, and the revised Medford CO maintenance plan. Oregon concurrently requested redesignation of

[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the ''USA Patriot Act''), Public Law 107–56.

[2] *See* 31 CFR 103.11(n)(2).

[3] *See* 31 CFR 103.11(f).

[4] *See* 37 FR 248986, 248988, November 23, 1972.

[5] *See* 66 FR 67670, 67672 (December 31, 2001).

[6] *See* 67 FR 44048 (July 1, 2002).

Medford from nonattainment to attainment for CO and EPA is approving the redesignation request.

DATES: This direct final rule will be effective on September 23, 2002, without further notice, unless EPA receives adverse comment by August 23, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Connie Robinson, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's requests and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, Office of Air Quality (OAQ–107), EPA, Region 10, Seattle, Washington, (206) 553–1086.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

I. Background Information

A. What Is a State Implementation Plan?

Section 110 of the Clean Air Act as amended in 1990 (the Act) requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. These ambient standards are established under section 109 of the Act and they address six criteria pollutants: CO, nitrogen dioxide, ozone, lead, particulate matter and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP. Each State has a SIP designed to protect its air quality. These SIPs can be extensive, containing regulations, enforceable emission limits, emission inventories, monitoring networks, and modeling demonstrations.

Oregon submitted their original section 110 SIP on January 25, 1972, and it was approved by EPA soon thereafter. Other SIP revisions have been submitted over the intervening years and likewise have been approved. The Medford CO SIP revisions and redesignation request submitted on May 31, 2001, are the subject of today's action.

B. Why Was This SIP Revision and Redesignation Request Submitted?

Oregon believes that the Medford, Oregon CO nonattainment area is eligible for redesignation to attainment because air quality data shows that it has not recorded a violation of the primary or secondary CO air quality standards since 1991. The Medford nonattainment area has shown attainment of the CO NAAQS since 1993 and the maintenance plan demonstrates that Medford will be able to remain in attainment for the next 10 years.

C. What Action Is EPA Taking?

Today's rulemaking announces three actions being taken by EPA related to air quality in the State of Oregon. These actions are taken at the request of the Governor of Oregon in response to requirements of the Act and EPA regulations.

First, EPA approves the 1993 base/attainment year CO emissions inventory for Medford. The 1993 inventory establishes a baseline of emissions that EPA considers comprehensive and accurate and provides the foundation for air quality planning in the Medford, Oregon CO nonattainment area.

Second, EPA approves the CO maintenance plan for the Medford nonattainment area into the Oregon SIP.

Third, EPA redesignates Medford from nonattainment to attainment for CO. This redesignation is based on validated monitoring data and projections made in the maintenance plan's demonstration. EPA believes the area will continue to meet the NAAQS for CO for at least ten years beyond this redesignation, as required by the Act.

II. Basis for EPA's Action

A. What Criteria Did EPA Use To Review the Maintenance Plan and Redesignation Request?

Section 107(d)(3)(E) of the Act states that EPA can redesignate an area to attainment if the following conditions are met:

1. The State must attain the applicable NAAQS.

2. The area must have a fully approved SIP under section 110(k) of the Act and the area must meet all the relevant requirements under section 110 and part D of the Act.

3. The air quality improvement must be permanent and enforceable.

4. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

EPA has found that the Oregon redesignation request for the Medford, Oregon CO nonattainment area meets the above requirements. A Technical Support Document on file at the EPA Region 10 office contains a detailed analysis and rationale in support of the redesignation of Medford's CO nonattainment area to attainment.

B. How Does the State Show That the Area Has Attained the CO NAAQS?

To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard per year at any monitoring site in the nonattainment area for at least two consecutive years. The redesignation of Medford is based on air quality data that shows that the CO standard was not violated from 1992 through 1995, or since. These data were collected by the Oregon Department of Environmental Quality (ODEQ) in accordance with 40 CFR 50.8, following EPA guidance on quality assurance and quality control, and are entered in the EPA Aerometric Information and Retrieval System, or AIRS. Since the Medford, Oregon area has complete quality-assured monitoring data showing attainment

with no violations, the area has met the statutory criterion for attainment of the CO NAAQS. ODEQ has committed to continue monitoring in this area in accordance with 40 CFR part 58.

C. Does the Area Have a Fully Approved SIP Under section 110(k) of the Act and Has the Area Met All the Relevant Requirements Under Section 110 and Part D of the Act?

Yes. Medford was classified as a nonattainment area with a design value less than 12.7 parts per million (ppm). Therefore, the 1990 requirements applicable to the Medford nonattainment area for inclusion in the Oregon SIP include a 1990 emission inventory with periodic updates, an oxygenated fuels program, basic motor vehicle inspection/maintenance (I/M) program, contingency measures, conformity procedures, and a permit program for new or modified major stationary sources.

For the purposes of evaluating the request for redesignation to attainment, EPA has previously approved all but one element of the Oregon SIP. Section 187(a) of the Act requires moderate CO areas to submit a comprehensive, accurate, and current inventory of actual emissions from all sources as described in section 172(c)(3). Specifically, the 1990 emissions inventory was reviewed but not acted upon to allow for additional correction and revision. We later determined that a 1993 inventory that incorporated these changes would satisfy the requirement for a base/attainment year inventory and would also serve as the attainment year emissions inventory submitted with the maintenance plan. Today's action concurrently approves this required element of the 110 SIP as part of the Oregon SIP with the redesignation to attainment.

D. Are the Improvements in Air Quality Permanent and Enforceable?

Yes. Emissions reductions achieved through the implementation of control measures are enforceable. These measures are: (1) The Federal Motor Vehicle Control Program, establishing emission standards for new motor vehicles; (2) a basic I/M program, and (3) an oxygenated fuels program.

ODEQ has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to a local economic downturn or unusual or extreme weather patterns. We believe the combination of certain existing EPA-approved SIP and Federal measures contribute to permanent and enforceable reductions in ambient CO levels that have allowed the area to attain the NAAQS.

E. Has the State Submitted a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?

Today's action by EPA approves the Medford CO maintenance plan. Section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. The Medford CO maintenance plan meets all of these requirements.

F. Did the State Provide Adequate Attainment Year and Maintenance Year Emissions Inventories?

Yes. ODEQ submitted comprehensive inventories of CO emissions from point, area and mobile sources using 1993 as the attainment year. Since air monitoring recorded attainment of CO in 1993, this is an acceptable year for the attainment year inventory. This data was then used in calculations to demonstrate that the CO standard will be maintained in future years. ODEQ calculated inventories for the required maintenance year (2012) and three years beyond (2015). Future emission estimates are based on forecast assumptions about growth of the regional economy and vehicle miles traveled.

Mobile sources are the greatest source of CO. Although vehicle use is expected to increase in the future, more stringent Federal automobile standards and removal of older, less efficient cars over time will still result in an overall decline in CO emissions. The projections in the maintenance plan demonstrate that future emissions are not expected to exceed attainment year levels.

Total CO emissions were projected from the 1993 attainment year out to 2015. These projected inventories were prepared according to EPA guidance. Because compliance with the 8-hour CO standard is linked to average daily emissions, emission estimates reflecting a typical winter season day (pounds of CO per day) were used for the maintenance demonstration. Oregon calculated these emissions without the implementation of the oxygenated fuels program. Oregon is requesting that the SIP requirement for an oxygenated fuels program be discontinued upon EPA's approval of the maintenance plan and redesignation. The projections show that CO emissions calculated without the implementation of the oxygenated fuels program are not expected to exceed 1993 attainment year levels. The following table summarizes the 1993 attainment year emissions, the 2015 maintenance year emissions, and 2015 emissions. The on-road mobile emissions are modeled for 1993 and 2015. Emissions for 2012 were calculated on the basis of a straight line interpolation between these two analysis years.

TABLE 1.—1993 CO ATTAINMENT YEAR ACTUAL EMISSIONS, 2012 CO MAINTENANCE YEAR PROJECTED EMISSIONS AND 2015 CO PROJECTED EMISSIONS

[Pounds CO/Winter Day]

Year	Mobile	Area	Non-road	Point	Total
1993 Attainment Year Actuals	57,342	19,656	6,536	28,517	112,051
2012 Maintenance Year Projected	28,439	16,083	8,800	19,420	72,742
2015 Year Projected	22,244	16,165	9,186	20,153	67,748

Detailed inventory data for this action is contained in the docket maintained by EPA.

G. How Will This Action Affect the Oxygenated Fuels Program in Medford?

ODEQ's maintenance demonstration shows that the Medford Urban Growth Boundary (UGB) is expected to continue to meet the CO NAAQS through 2015 without the oxygenated fuels program, while maintaining a safety margin. Therefore, EPA approves the State's request to discontinue the oxygenated fuels program except as a contingency measure in the maintenance plan. The oxygenated fuels program will not need to be implemented following redesignation unless a future violation of the standard triggers its use as a contingency measure.

H. How Will the State Continue To Verify Attainment?

In accordance with 40 CFR part 50 and EPA's Redesignation Guidance, ODEQ has committed to analyze air quality data on an annual basis to verify continued attainment of the CO NAAQS. ODEQ will also conduct a comprehensive review of plan implementation and air quality status eight years after redesignation. The State will then submit a SIP revision that includes a full emissions inventory update and provides for the continued maintenance of the standard ten years beyond the initial ten-year period.

I. What Contingency Measures Does the State Provide?

If the monitored CO level at any site registers a second high 8-hour average of 8.1 ppm during a calendar year, the ODEQ will convene a planning group to review and recommend contingency strategies for implementation in order to prevent a violation. These strategies include but are not limited to improvements to parking and traffic circulation; aggressive signal retiming program; increased funding for transit; enhanced I/M program; and accelerated implementation of bicycle and pedestrian networks.

Section 175(d) of the Act requires retention of all control measures contained in the SIP prior to redesignation as contingency measures in the CO maintenance plan. The oxygenated fuels program was a control measure contained in the SIP prior to redesignation and is a primary contingency measure in the maintenance plan. This contingency measure will be reinstated in the event of a quality-assured violation of the NAAQS for CO at any permanent monitoring site in the nonattainment area. A violation will occur when any monitoring site records two eight-hour average CO concentrations that equal or exceed 9.5 ppm in a single calendar year. If triggered, this contingency measure would require all gasoline blended for sale in Medford to meet requirements identical to those of the current oxygenated gasoline program. Implementation will continue throughout the balance of the CO maintenance period, or until such time as a reassessment of the ambient CO monitoring data establishes that the contingency measure is no longer needed and EPA agrees to a revision.

J. How Will the State Provide for Subsequent Maintenance Plan Revisions?

In accordance with section 175A (b) of the Act, the state has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. That revised SIP must provide for maintenance of the standard for an additional ten years. It will include a full emissions inventory update and projected emissions demonstrating continued attainment for ten additional years.

K. How Does This Action Affect Transportation Conformity in Medford?

Under section 176(c) of the Act, transportation plans, programs, and projects in nonattainment or maintenance areas that are funded or approved under 23 U.S.C. or the Federal Transit Act, must conform to the applicable SIPs. In short, a transportation plan is deemed to conform to the applicable SIP if the emissions resulting from implementation of that transportation plan are less than or equal to the motor vehicle emission level established in the SIP for the maintenance year and other analysis years.

In this maintenance plan, procedures for estimating motor vehicle emissions are well documented. For transportation conformity and regional emissions analysis purposes, an emissions budget has been established for on-road motor vehicle emissions in the Medford UGB. The transportation emissions budget numbers for the plan are shown in Table 2.

TABLE 2.—MEDFORD UGB TRANSPORTATION EMISSIONS BUDGET

[Pounds CO/Winter Day]

Year	2000	2015	2020 and after
Budget (1st 4 yrs I/M exempt)	63,860	26,963	32.640

EPA found this motor vehicle emissions budget adequate for conformity purposes. See 67 FR 17686, April 11, 2002.

L. How Does This Action Affect Specific Rules?

Upon the effective date of this action, Medford, Oregon will no longer be a nonattainment area and will become a maintenance area. Additionally, OAR 340–204–0090, Oxygenated Gasoline Control Areas, has been revised to discontinue the program in Medford upon the effective date of this action. EPA is approving this rule as a revision to the SIP and replacing the rule dated 10–25–00. Below are the specific rule revisions affected by this action which EPA is incorporating by reference into the SIP, with the state effective date in parentheses. OAR 340–204–0090, Oxygenated Gasoline Control Areas (3–27–01)

III. Final Action

EPA is approving the following revisions to the Oregon SIP: the 1993 CO base/attainment year emissions inventory for Medford, Oregon, and the Medford CO maintenance plan. EPA is also approving redesignation of Medford, Oregon from nonattainment to attainment for CO. EPA is approving the Medford CO maintenance plan, and Oregon's request for redesignation to attainment because Oregon has demonstrated compliance with the requirements of section 107(d)(3)(E). We believe that the redesignation requirements are effectively satisfied based on information provided by ODEQ and contained in the Oregon SIP and Medford Oregon CO maintenance plan.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the

Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Oregon Notice Provision

During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. EPA determined that, because the five-day advance notice provision required by ORS 468.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority that a state must demonstrate to obtain SIP approval, as specified in section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude federal approval of a section 110 SIP revision.

To correct the problem the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph ORS 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify a state program from federal approval or delegation. ODEQ responded to EPA's understanding of the application of ORS 468.126(2)(e) and agreed that, because federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

Oregon Audit Privilege

Another enforcement issue concerns Oregon's audit privilege and immunity law. Nothing in this action should be construed as making any determination or expressing any position regarding Oregon's Audit Privilege Act, ORS 468.963 enacted in 1993, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act Program resulting from the effect of Oregon's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 25, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(137) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(137) On May 31, 2001, the Oregon Department of Environmental Quality requested the redesignation of Medford to attainment for carbon monoxide. The State's maintenance plan, base/attainment year emissions inventory, and the redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Oregon Administrative Rules 340–204–0090, as effective March 27, 2001.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.338, the table entitled ''Oregon—Carbon Monoxide,'' the entry for Medford Area, Jackson County is revised to read as follows:

* * * * *

§ 81.338 Oregon.

* * * * *

OREGON—CARBON MONOXIDE

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* *	*	*	*	*
Medford Area: Jackson County (part).	September 23, 2002	Attainment		
* *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 02–18584 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 266, 268 and 271

[FRL–7248–3]

RIN 2050–AE69

Zinc Fertilizers Made From Recycled Hazardous Secondary Materials

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today finalizing regulations under the Resource Conservation and Recovery Act (RCRA) that apply to recycling of hazardous secondary materials to make zinc fertilizer products. This final rule establishes a more consistent regulatory framework for this practice, and establishes conditions for excluding hazardous secondary materials that are used to make zinc fertilizers from the regulatory definition of solid waste. The rule also establishes new product specifications for contaminants in zinc fertilizers made from those secondary materials.

DATES: This final rule is effective July 24, 2002, except for the amendment to 40 CFR 266.20(b), which eliminates the exemption from treatment standards for fertilizers made from recycled electric arc furnace dust. The effective date for that provision in today's final rule is January 24, 2003.

ADDRESSES: Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The index and some supporting materials are available electronically. *See* the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rulemaking, contact Dave Fagan, U.S. EPA (5301W), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–0603, or e-mail: *fagan.david@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

Entities potentially regulated by this action are expected to include manufacturers of zinc fertilizers, and the generators of hazardous secondary materials who will supply zinc-bearing feedstocks to those manufacturers. Some intermediate handlers, such as brokers, who manage hazardous secondary materials may also be affected by this rule.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket

EPA has established an official public docket for this action under Docket ID No. RCRA–2000–0054. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket, 1235 Jefferson Davis Hwy, 1st Floor, Arlington, VA 22201. You may copy up to 100 pages from any docket at no charge. Additional copies cost $0.15 each.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the

public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select ''search,'' then key in the appropriate docket identification number.

The index of comments received and supporting materials for this rulemaking are available from the RCRA Information Center. The official record for this action is in paper form. EPA has transferred all comments received electronically into paper form and has placed them in the official record, which also includes all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA's responses to the major comments received on this rulemaking are presented in the preamble to this final rule; other comments are addressed in a separate ''Response to Comments'' document which is also part of the official record for this rulemaking.

The contents of today's action are listed in the following outline:

I. Statutory Authority

These regulations are promulgated under the authority of sections 3001, 3002, 3003, and 3004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C 6921, 6922, 6923 and 6924.

II. Background

A. What Is the Purpose of Today's Final Rule?

Today's final rule puts in place a new, more coherent system for regulating the practice of manufacturing zinc fertilizers from hazardous secondary materials, and establishes conditions under which such materials can be recycled to produce fertilizers without the materials or the fertilizers being regulated as hazardous wastes. The rule, which was proposed on November 28, 2000 (65 FR 70954), is the Agency's response to concerns expressed by public interest groups, citizens, industry and state environmental agencies with regard to the RCRA regulations that have previously applied to this practice. We believe that these new regulations will create a more consistent and comprehensive regulatory framework for such recycling activities, will make industry more accountable for those activities, will establish more appropriate limits on contaminants in zinc fertilizers made from hazardous secondary materials, and in general will promote safe, beneficial recycling in the zinc fertilizer industry.

EPA wishes to emphasize that today's regulatory action addresses only one aspect of the larger issue of contaminants in fertilizers. Fertilizers made from recycled hazardous wastes (which are the only types of fertilizers subject to regulation under EPA's RCRA authorities) represent a very small segment-less than one half of one percent—of the total fertilizer market. To our knowledge, virtually all of these are zinc micronutrient fertilizers. Currently, less than half of all zinc fertilizers on the market are made from such recycled materials. In any case, EPA's studies of contaminants in fertilizers have indicated that the great majority of fertilizers are safe when used properly. This general finding is consistent with similar studies done by states such as Washington and California.

Because fertilizers are generally safe, EPA sees no compelling reason to launch a broad new federal regulatory program to address fertilizer contaminants generally (such regulatory authority is potentially available under the Toxic Substances Control Act). This is not to say, however, that there is no need at all to regulate fertilizer contaminants. A wide range of fertilizers and soil amendments, including many products that are not made from recycled wastes, contain appreciable levels of heavy metal contaminants. In addition, EPA's fertilizer studies concluded that a few of these products may contain contaminants at levels approaching those which could pose unacceptable risks to human health and the environment. There is also the potential for tainted feedstocks to be introduced into the market unknowingly, particularly when such materials are imported into the country from unknown sources. A recent incident in the Pacific Northwest involving imported shipments of zinc sulfate material with extremely high cadmium levels is evidence that such problems can occur (*see* Washington Department of Ecology fact sheet at *http://www.ecy.wa..gov/pubs/004025.pdf*).

Traditionally, state agriculture agencies have had responsibility for regulating the content of fertilizers, and in recent years several states (so far, Washington, Texas and California) have developed comprehensive programs to control contaminants in fertilizers and soil amendments. We believe that these state programs have been largely successful, and the Agency supports further state efforts in this area. Additional discussion of state fertilizer regulations and how they relate to this

RCRA rulemaking is presented in section V. of this preamble.

B. Who Will Be Affected by Today's Final Rule?

We expect that the primary impact of this rule will be on manufacturers of zinc fertilizer products who have an interest in using hazardous secondary materials as feedstocks, and the generators who supply them. We expect that a number of manufacturers who have heretofore been avoiding the use of hazardous wastes will use the exclusion in today's rule to begin using materials such as zinc-rich dusts from brass foundries and fabricators as substitutes for other feedstocks. The generators of those materials are thus expected to benefit from this rule. The Agency is aware that the last manufacturer of K061 derived fertilizer (Frit Industries of Ozark, Alabama) has already begun the transition to use of alternative feedstock materials. Nucor Steel, the K061 generator that has been Frit Industries' supplier, is likewise switching to other recycling or disposal options. More detailed discussion of the impacts of this rule is presented in section VII.A of this preamble, and in the economic impact analysis document that has been prepared for this rulemaking.

C. How Were Public Comments on the Proposal Considered by EPA?

EPA received more than 600 comments on the proposal during the formal comment period, which closed on February 26, 2001. The Agency also received a number of letters, cards and emails commenting on the proposal after the comment period, and these comments have been entered into the docket for this rulemaking. In addition, more than seventy individuals made oral statements at the public hearing on the proposal, which was held in Seattle, WA on November 29, 2001. Those statements have been recorded in the transcript of that hearing, which is also in the docket. At the hearing a substantial number of written comments were also submitted to the Agency, and have been included in the docket as well. In total, nearly 1000 comments were received on the proposed rule.

EPA has reviewed each comment on the proposal that was submitted. The major substantive comments that were received, and the Agency's response to them, are discussed in following sections of today's preamble. Other comments (with EPA's responses) are set out in a separate Response to Comments document. Where many commenters expressed similar or identical views on certain issues, these have been consolidated in the document, and the Agency has prepared a collective response to them. The Response to Comments document has been placed in the docket for this rulemaking.

D. How Does This Final Rule Compare to the Proposal?

In today's final rule EPA is promulgating the same basic regulatory approach that was outlined in the November 28, 2000 proposal. To summarize, today's rule:

- Removes the exemption from land disposal restrictions (LDR) treatment standards for zinc fertilizers made from electric arc furnace dust, or K061; and
- Establishes a conditional exclusion from the RCRA regulatory definition of solid waste for hazardous secondary materials that are legitimately recycled to make zinc micronutrient fertilizers; and
- Establishes conditions (chiefly concentration limits for certain heavy metals and dioxins) under which zinc fertilizers produced from hazardous secondary materials are not classified as solid wastes, and hence are not subject to RCRA subtitle C regulation.

Although EPA has finalized the same basic regulatory approach that was outlined in the November 28, 2000 proposed rule, several substantive revisions have been made in response to comments received. The following is a summary of these changes, which are discussed in more detail in following sections of this preamble:

Applicability. The final rule clarifies how the new product specification contaminant limits will apply to zinc fertilizers made from regulated (*i.e.,* non-excluded) hazardous wastes. In short, such fertilizers will need to comply with the existing, applicable land disposal restrictions (LDR) treatment standards for the hazardous wastes the fertilizers contain. Manufacturers of such fertilizers may, however, choose to meet the new, more stringent contaminant limits, if they wish.

Intermediate handlers. Under today's final rule, intermediate handlers (*e.g.,* brokers) of excluded materials will be eligible for the same exclusion as generators, provided they choose to meet the same conditions for reporting, record keeping and storage of excluded materials that apply to generators of such materials. The proposed rule did not contain any provisions specifically addressing intermediate handlers.

Additional testing. Today's final rule provides for additional sampling and analysis of fertilizer products in cases where processes or feedstock materials are changed in ways that could significantly affect contaminant levels in the fertilizers.

One-time notice. Two changes have been made to the condition for one-time notices that generators will need to submit to EPA or to authorized state agencies. One change eliminates the need to provide certain potentially proprietary information in the notices (*e.g.,* estimated quantities of material to be shipped to specific manufacturers). The other change will require that facilities identify in the one-time notice when they intend to begin managing materials under the terms of the conditional exclusion.

Certifications. The final rule eliminates the proposed condition that each shipment of excluded material to another state be accompanied by a certification that the receiving state is authorized to administer the conditional exclusion in this regulation.

Unit Closure. The final rule includes a provision clarifying that storage units which have previously stored hazardous wastes, and that subsequently will only store excluded materials according to these regulations, will not be subject to RCRA closure requirements.

Limits for nickel and arsenic. The proposed level for arsenic has been lowered in this final rule, and the proposed level for nickel has been eliminated.

Storage in supersacks. The proposed condition that would have prohibited outside storage of excluded secondary materials in non-rigid ''supersack'' containers has been revised to allow the use of these types of containers outdoors, provided they are managed within units (*e.g.,* on concrete pads) that have containment systems to prevent releases from leaks, spills or precipitation events.

E. Why Does EPA Believe This Is the Best Approach for Regulating This Recycling Practice?

EPA's main objectives for this rulemaking are to:

- Establish a more consistent, more comprehensive, and more protective regulatory framework for this recycling practice; and
- Establish more appropriate limits on contaminants in recycled zinc fertilizers that effectively distinguish fertilizer products from wastes by adopting limits that are already found in commercial fertilizers, which can be achieved with well-demonstrated manufacturing techniques, and that are protective; and
- Encourage legitimate recycling by streamlining regulatory restrictions on the management of hazardous secondary materials used to make zinc fertilizers,

while making industry more accountable for its recycling activities.

EPA believes that the regulatory approach in today's final rule is the best means of achieving these objectives, for several reasons. We expect it to be environmentally beneficial by removing regulatory anomalies and making zinc fertilizers cleaner—for example, by halting production of K061-derived zinc fertilizers with relatively high contaminant levels (*see* section III.B. of this preamble). A further environmental benefit will be recovery of large volumes of valuable zinc, rather than landfilling this resource. The rule will also enhance the ability of regulatory agencies to effectively monitor this recycling practice, while removing unnecessary regulatory disincentives on legitimate recycling. We also believe that the new contaminant limits in this rule are reasonable and are consistent with the environmental objectives stated above, and can be (and are being) easily achieved by industry using relatively simple, economically viable, existing manufacturing practices. These levels thus reasonably demarcate products from wastes.

While EPA believes that this final rule provides an appropriate balance of conditions and incentives, a large proportion of the more than 1000 total comments we received expressed a clear preference for a more stringent regulatory approach. Most of these comments were received in the form of emails, post cards, form letters and oral statements made at the public hearing. In general, these commenters expressed support for a regulatory approach similar to the option in the preamble identified as ''Maintain current UCD requirements, with additional reporting, record keeping and testing requirements for all hazardous waste derived fertilizers'' (*see* 65 FR 70964–5, November 28, 2000). Under this type of approach, the current hazardous waste regulatory structure would be maintained and made more stringent by requiring lower limits on a wider range of potential fertilizer contaminants, greatly expanded testing requirements, labeling of hazardous waste derived fertilizer products, and much more in-depth reporting of environmental and manufacturing data. Many commenters suggested in addition that there should be a complete prohibition on the use of any dioxin-containing hazardous wastes to make fertilizers.

Such a regulatory approach would likely result in a complete elimination of hazardous secondary materials as a source of zinc to make fertilizers, since it would perpetuate existing regulatory disincentives (*e.g.,* RCRA permit requirements, as explained further in this preamble) and substantially increase compliance costs. To avoid these regulatory disincentives, manufacturers would almost certainly use alternative feedstock materials (which would likely contain the same or similar contaminants as are found in hazardous wastes) to make fertilizers. The resulting fertilizers would be largely unregulated, since they would not be subject to EPA's RCRA regulatory system, and only a few states presently regulate fertilizer contaminants under other legal authorities. Therefore, by eliminating the use of hazardous wastes in fertilizer manufacture, contaminant levels in some fertilizers could actually increase, which we do not believe is a desirable environmental result (not to mention the energy and other resources conserved by avoiding treatment and disposal of zinc-bearing secondary materials).

As explained in the preamble to the proposed rule, EPA has found that a wide variety of zinc-bearing materials—including hazardous wastes—can be safely and legitimately processed and recycled into high-quality zinc fertilizer products by using relatively simple, existing manufacturing techniques. In other words, the quality of the end fertilizer product depends almost entirely on the manufacturing process, rather than on the type of feedstock material that is used. EPA did not receive any comments on the proposal that presented technical or scientific information to challenge these findings, and we therefore have no reason to believe that high-purity zinc fertilizers made from recycled hazardous wastes are any different in composition or risk potential from those made from other types of materials. (*See* proposed rule at 65 FR at 70959 n. 2 discussing the similarity of hazardous constituent levels in zinc fertilizers made from hazardous wastes and from other materials). Given that high purity zinc fertilizers made from hazardous secondary materials are essentially identical to those made from other types of feedstock materials, we see no environmental reason for increasing regulatory restrictions over such products. We believe that today's rule provides the proper balance of protections and incentives for this recycling practice without the need for additional, more prescriptive regulatory controls. The Agency therefore chose not to adopt the more stringent regulatory approach (described above) that was advocated by many commenters.

We also received a number of comments that simply decried the practice of using hazardous waste to make fertilizers, claiming that it creates serious threats to human health, the food supply, and the environment. None of these commenters, however, offered any specific evidence of such threats, or any concrete information indicating that hazardous wastes are being indiscriminately added to fertilizers as a way of disposing of them. It is important to note that any such acts would be considered ''sham'' recycling of hazardous waste, which is illegal.[1] Further, EPA's studies of contaminants in fertilizers have not found evidence to support such serious concerns. We do not wish to minimize the potential for adverse health effects from exposure generally to toxic chemicals such as heavy metals. We believe, however, that with regard to fertilizers, much of this concern is apparently misplaced, and may have resulted from unsubstantiated speculations and exaggerated claims of risk that have appeared in the media and elsewhere. We hope that this final rule, and the record of evidence that supports it, will help to allay unnecessary public fears with regard to fertilizers made from recycled hazardous wastes.

III. Detailed Description of Today's Final Rule

A. Applicability

Today's rule establishes a new regulatory framework for legitimate recycling of ''hazardous secondary materials'' in the manufacture of zinc micronutrient fertilizers. A secondary material is a sludge, by-product, or spent material. *See* 50 FR at 616 n. 4 (Jan. 4, 1985). A hazardous secondary material is a secondary material that would be a hazardous waste (*i.e.,* is listed or exhibits a characteristic of hazardous waste) if it is first a solid waste. Hazardous secondary materials are presently classified as hazardous wastes when recycled to produce

[1] Sham recycling is waste treatment or disposal occurring under the guise of recycling. *United States* v. *Marine Shale Processors,* 81 F. 3d 1361, 1365 (5th Cir. 1996). Sham recycling occurs, for example, ''if extra materials are added to [the material to be recycled] that provide no benefit to the industrial process * * *.'' *American Petroleum Inst.* v. *EPA,* 216 F. 3d 50, 58 (D.C. Cir. 2000). EPA has frequently noted factors that are likely to be relevant in determining whether sham recycling is occurring. *See United States* v. *Marine Shale Processors,* 81 F. 3d at 1365 nn. 3 and 4 (compiling **Federal Register** citations). These include: (a) Whether the secondary material is ineffective or only marginally effective for the claimed use (*i.e.,* does not contribute a significant element to the recycled product or to the recycling process); (b) whether the secondary material is used in excess of the amount needed; and (c) whether the secondary material is handled in a manner consistent with its use as a substitute for an industrial feedstock (*i.e.,* to guard against loss).

fertilizers. *See* 65 FR at 70958–59, explaining the ''use constituting disposal'' provisions in EPA's hazardous waste recycling rules. However, EPA is referring to these materials in this preamble as ''secondary materials'' or ''hazardous secondary materials,'' rather than as ''hazardous wastes,'' since today's rule excludes them from being defined as wastes provided that certain conditions are followed.

The rule will potentially apply to manufacturers of zinc fertilizers who use (or wish to use) hazardous secondary materials as ingredients in their production processes, and to the generators and any intermediate handlers who supply those materials to the manufacturers. The rule will not directly affect any zinc fertilizers that are made from non-hazardous materials (''secondary'' or otherwise), nor will it change the current regulatory requirements for non-zinc fertilizers made from hazardous wastes. A full explanation of the regulatory requirements for hazardous waste fertilizer recycling that have been in effect prior to today's action is presented in the preamble to the proposed rule (*see* November 28, 2000, 65 FR at 70956).

It should be noted that today's final rule creates two separate conditional exclusions-an exclusion from regulation for the hazardous secondary materials used in zinc fertilizer manufacture, and an exclusion for the fertilizer products that are made from these materials. The exclusion for hazardous secondary materials will potentially be available to those parties who handle such materials prior to recycling (*i.e.,* the secondary material generators, any intermediate handlers, and the fertilizer manufacturers). The exclusion provided for the finished zinc fertilizer products will only apply to fertilizer manufacturers, since they are solely responsible for ensuring that their products meet the specifications in today's rule.

To reiterate, today's final rule will not apply to any fertilizers other than zinc fertilizers that are made from recycled hazardous secondary materials. Thus, if a manufacturer were to use hazardous waste as an ingredient in a non-zinc fertilizer, the manufacturer would not be eligible for the conditional exclusion in today's rule, and will need to comply with applicable hazardous waste management requirements [*see* existing § 266.20(b)].

Effective Dates. Except for one provision, today's rule will become effective immediately upon publication in the **Federal Register**. The exception is the provision in the rule that amends § 266.20(b), removing the exemption from treatment standards for fertilizers made from recycled K061. The effective date for that provision will be January 23, 2002.

The RCRA statute establishes six months as the usual effective date for Subtitle C rules (*see* RCRA section 3010 (b)), though the Agency may provide for a shorter or immediate effective date in the case of regulations with which the regulated community does not need six months to come into compliance, as determined by the Admininstrator. Since today's final rule is essentially deregulatory in nature (with the exception noted above), we see no reason to delay its effective date. Thus, except for the provision that removes the exemption for K061 derived fertilizers, today's rule will be effective immediately upon publication in the **Federal Register**.

One commenter (Frit Industries) requested an extended (nine month) effective date for removing the exemption from treatment standards for K061 fertilizers. We note that there is no provision in the RCRA statute for such extended effective dates. In addition, the commenter has had ample notice of the Agency's intent to finalize this provision, and has been aware of the Agency's schedule for completing this regulatory action. Thus, we believe the commenter has had sufficient notice of this action.

Once this provision of the rule becomes effective, sales of K061 derived fertilizers by manufacturers to other parties will not be permitted, unless those fertilizers can meet the specifications for exclusion in today's rule. Assuming they cannot meet the exclusion specifications, remaining manufacturer inventories of K061 fertilizers after the effective date will need to be managed in accordance with applicable hazardous waste regulations. As a practical matter, however, inventories of K061 (or other) fertilizers that have already entered commerce (*i.e.,* have been sold and shipped to other parties) before the effective date will not be affected. Thus, fertilizer dealers and others who may have unsold stocks of K061 fertilizers after this rule's effective date will not be affected, provided the fertilizers were sold and shipped by the manufacturer prior to the effective date. It is our intent to hold manufacturers of K061 fertilizers (and any other affected fertilizers) responsible for ensuring that non-compliant products do not enter commerce after the effective date of this rule.

B. Removal of Exemption for Fertilizers Made from Electric Arc Furnace Dust (K061)

Today's rule eliminates the provision in § 266.20 that has exempted zinc fertilizers made specifically from electric arc furnace dust (K061) from having to meet applicable land disposal restrictions (LDR) treatment standards (*i.e.,* the treatment standards for K061). This exemption was originally promulgated in the ''First Third'' LDR rulemaking (August 17, 1988, 52 FR 31138), based on a determination by EPA that fertilizers made from K061 had metal contaminant levels comparable to those of substitute zinc fertilizers (including those made from non-hazardous waste feedstocks), and that the use of K061 fertilizers did not appear to pose significant risks (*see* 53 FR 31164, August 17, 1998). However, in recent years zinc fertilizers of much higher purity (*e.g.,* zinc sulfate monohydrate, or ZSM fertilizers) have become widely available, and K061 derived zinc fertilizers now have among the highest contaminant (*i.e.,* hazardous constituent) levels of any zinc fertilizers. Thus, EPA believes that the original basis for the K061 exemption is no longer valid, and sees no reason why these fertilizer products should not have to meet the same contaminant limits as other fertilizers made from recycled hazardous wastes (or be excluded from regulation in the same way as other such fertilizers).

Response to Comments. Numerous commenters expressed support for a complete ban on the use of K061 in fertilizer manufacture, often citing the relatively high levels of dioxins in K061 fertilizers compared to other fertilizer products. Others urged a ban on the use of all ''dioxin laden wastes'' to make fertilizer. A few commenters opposed removing the current LDR exemption for K061 derived fertilizers.

EPA chose not to ban the use of K061 to make zinc fertilizers, for several reasons. Most importantly, we believe that with the promulgation of today's rule the issue of dioxins in K061 derived fertilizers will effectively become moot, largely because the new rules will in all likelihood eliminate the use of K061 to make zinc oxysulfate fertilizers. Oxysulfate is a type of zinc fertilizer that is typically made by simply mixing zinc-bearing material (*e.g.,* K061) with sulfuric acid. There is typically no processing step to remove contaminants—whatever impurities are in the feedstock material will usually remain in the finished product. Such products will be unable to meet the new exclusion levels in today's rule, or the

applicable LDR standards. Thus, we do not expect this type of fertilizer to be produced after the effective date of today's regulations.

At the same time, it is possible to remove the contaminants in K061 to make a different type of fertilizer, such as high-purity ZSM fertilizer, which can satisfy the conditional exclusion levels. Most of the zinc in K061 is bound with iron in a zinc ferrite compound that is relatively insoluble and, at normal temperatures, cannot be effectively digested with acids to precipitate and filter out contaminants such as lead and other metals. However, it has been demonstrated that raw K061 can be first processed in high-temperature furnaces to form a zinc oxide material that can then easily be made into ZSM. Such thermal treatment, combined with subsequent manufacturing processes, is likely to destroy most or nearly all dioxins present in K061. The agency thus sees no dioxin-related reason to prohibit this use of K061. Further discussion of dioxins in hazardous waste derived fertilizers is presented in section III.D.3 of this preamble.

A few comments were received that opposed removing the current exemption from LDR treatment standards for K061 derived zinc fertilizers. These commenters did not, however, challenge the Agency's logic for eliminating the exemption, but rather argued that EPA has no legal jurisdiction to regulate these fertilizers at all, based on recent court decisions. EPA rejects these arguments, for the reasons discussed later in this preamble.

C. Conditional Exclusion for Hazardous Secondary Materials Used To Make Zinc Fertilizers

In this final rule, EPA has created a ''conditional exclusion'' from the RCRA definition of solid waste for hazardous secondary materials (which would otherwise be classified as hazardous wastes, as explained above) that are used as ingredients to make zinc micronutrient fertilizers. As mentioned previously, this feature of the final rule is consistent with the proposal, though a few specific changes have been made, as explained below.

The conditional exclusion provided in today's rule is an exclusion only from the RCRA subtitle C regulations, and not from the emergency, remediation and information-gathering sections of the RCRA statute [sections 3004(u), 3007, 3013, and 7003]. This is consistent with the principle already codified for other excluded secondary materials—that the exclusion is only from RCRA regulatory provisions, and not from these statutory authorities. See § 261.1(b). EPA is restating this principle here in the interests of clarity, not to reopen the issue. The legal basis for the distinction of the Agency's authority under these provisions is that they use the broader statutory definition of solid waste (and hazardous waste as well) and so need not (and should not) be read as being limited by the regulatory definition. *See,* for example, 50 FR at 627. See also *Connecticut Coastal Fishermen's Assn.* v. *Remington Arms,* 989 F. 2d 1305, 1313–15 (2d Cir. 1993) (EPA may permissibly ascribe different definitions to the term ''solid waste'' for regulatory and statutory purposes).

Today's conditional exclusion is intended to remove many of the regulatory disincentives that to date have discouraged legitimate recycling in the zinc fertilizer industry. Previously, hazardous wastes that were recycled to make fertilizers were subject to the full suite of hazardous waste regulatory requirements, including the requirement to obtain a RCRA permit for storage of wastes prior to fertilizer production. This permitting requirement in particular has dissuaded a number of fertilizer manufacturers from using valuable secondary materials as feedstocks, since RCRA permits can be time and resource-intensive to obtain and maintain, and a number of alternative materials are readily available that are not subject to subtitle C regulation, either because they are not hazardous (*i.e.,* are not listed and do not exhibit a characteristic), or are raw materials. By allowing companies to manage these hazardous secondary materials in accord with the conditions which are established in today's final rule, EPA expects that the rate of legitimate recovery of zinc values in these materials will increase considerably, which should be environmentally beneficial and result in lower costs to farmers for zinc fertilizers.

Once this rule becomes effective, those who wish to begin managing hazardous secondary materials according to the conditional exclusion will first need to notify EPA or the authorized state of their intent to do so. This will provide overseeing agencies information as to who will be operating under this alternative regulatory system, when they will start, and the type of materials involved. In EPA's view, for this particular recycling practice, this is the minimum information needed to ascertain that legitimate recycling of the zinc-bearing materials will occur, and by whom. The other conditions that must be met to use and maintain the conditional exclusion address the proper storage of materials prior to recycling, and documentation of all off-site shipments of excluded materials. In addition, fertilizer manufacturers will need to submit an annual report to the overseeing agency that identifies the type, quantity and origin of all excluded materials that were used in the previous year. Again, EPA believes that for this recycling practice, these conditions are needed to assure that the materials will be recycled legitimately.

1. Applicability

Several changes have been made to the final rule with regard to its applicability. For one, the final rule has been modified with regard to how it applies to intermediate handlers who act as brokers or middlemen between generators and fertilizer manufacturers. The proposed regulatory language did not specify any requirements or conditions specifically for intermediate handlers, though EPA discussed the issue and solicited comments on it in the preamble (65 FR at 70962–3). Several commenters observed that the use of intermediate handlers in this industry is not uncommon, with one commenter suggesting that in the final rule an intermediate handler should have the same responsibilities as a manufacturer who uses the conditional exclusion.

The conditions in the final rule for excluding hazardous secondary materials are intended to reflect normal, responsible practices for management of valuable material commodities, rather than waste management. Since intermediate handlers may be an integral part of the management chain for these materials prior to recycling, we believe it is reasonable to also establish conditions for them. If intermediate handlers had no responsibilities for maintaining the excluded status of materials they receive, the materials could potentially be mixed or consolidated with other materials, or could in some other way lose their regulatory identity and escape the chain of custody that provides accountability to the government and the public to ensure that these materials are being handled in way that is consistent with the handling of a valuable commodity. They also could simply be stored haphazardly and create the types of damage associated with improper management of discarded materials, as has occurred in past damage incidents within the zinc fertilizer recycling industry (records of these damage cases are in the docket for this rulemaking).

EPA sees no reason to prohibit excluded materials from being shipped through intermediate handlers, since they may provide a useful service to

both generators and manufacturers in this industry. Moreover, use of such middle-men is relatively common in the industry, and so is consistent with the idea of an exclusion conditioned to conform to industry commercial practice. However, their use must not compromise the protections that have been built into this conditional exclusion.

We believe that intermediate handlers have incentives for managing conditionally excluded materials that are very similar to the generators', and thus should have similar responsibilities (*i.e.,* any exclusion for intermediate handlers should be conditioned in the same manner as for generators). The final rule therefore specifies that intermediate handlers who wish to use the conditional exclusion must meet the same set of conditions that apply to the generators of the materials [*see* § 261.4(a)(20)(ii)]. In effect, any intermediate handler who elects to receive conditionally excluded materials and wishes to maintain their excluded status under the terms of today's rule would need to provide prior notice to the appropriate regulatory agency, store the materials in accordance with the conditions in the rule, and meet all other conditions that would otherwise apply to the generator of the material. Alternatively, it is possible that an intermediate handler might choose not to use the conditional exclusion, in which case any excluded materials received by the handler would lose their excluded regulatory status.

2. Conditions to the Exclusion

In general, the conditions established in today's final rule for storage and documentation of excluded material are designed to reflect normal fertilizer industry handling practices for zinc-bearing feedstock materials. They are the same basic conditions that were proposed for establishing and maintaining a regulatory exclusion for hazardous secondary materials used to make zinc fertilizers, with several relatively minor changes.

Under this rule, in order to begin managing hazardous secondary materials that will be used to make zinc fertilizers without being subject to the current hazardous waste regulatory system, the responsible party (*i.e.,* the secondary material generator, the fertilizer manufacturer or an intermediate handler) must initially notify the appropriate regulatory agency that he or she intends to begin doing so, and must then meet the conditions set out in this regulation. These conditions address proper storage of the excluded secondary material, notification of regulatory agencies, and documenting and maintaining records of any off-site shipments of such material. Fertilizer manufacturers who wish to use the conditional exclusion will also need to submit an annual report to EPA or the authorized state agency on the types, origins and quantities of excluded materials used in the previous year.

The storage conditions in today's rule are based on normal industry practices for storing zinc-bearing feedstock materials used to make fertilizers, and thus are analogues to the hazardous constituent specification levels for the fertilizers, which likewise are drawn from existing industry practice. The conditions generally serve to prevent these materials from being discarded via wholesale release into the environment. The conditions also reflect the fact that zinc fertilizer feedstock materials are typically valued commodities, and are thus stored so as to prevent releases or other losses of the material. EPA's review of feedstock storage practices by zinc fertilizer manufacturers indicated, for example, that bulk feedstock materials are usually stored outdoors in hoppers or other types of tanks, while indoor storage is typically in supersack containers or in piles. We are not aware of any zinc fertilizer manufacturer currently storing feedstock materials in ways that readily allow dispersal via wind or precipitation runoff (e.g., open, outdoor piles). See the memorandum ''Industry Storage Practices,'' in the docket for this rulemaking. Thus, we believe that the conditions in today's rule reflect this industry's feedstock storage practices, and thus reasonably serve to demarcate valuable feedstocks from wastes.

EPA has made several changes from the proposed rule to the specific conditions that must be met in order to be eligible for the exclusion. These changes address outside storage of material in supersack containers, initial notifications to regulatory agencies, certifications for off-site shipments of excluded material, and enforcement of the conditions, as discussed in more detail below.

Outdoor storage in supersack containers. Supersacks are flexible, woven resin containers designed to hold approximately one ton of dry material, and are commonly used by generators, manufacturers and others to store various types of solid zinc fertilizer feedstock materials. Several commenters objected to the proposed condition that would have allowed only indoor storage of excluded materials in this type of container, asserting that such a restriction could be a hardship for smaller facilities that may not have sufficient indoor storage capacity, and that with a few simple safeguards supersacks can be safely and reliably used to store this type of material out of doors.

EPA agrees with the commenters' assertions that outdoor storage of excluded material in supersack containers can be safe and does not automatically indicate the material is being discarded, and therefore should be allowed under certain conditions. We are unaware of any environmental damage cases associated with storage of zinc fertilizer feedstock materials in supersack containers. The final rule therefore specifies that storage of excluded material in non-rigid containers (*e.g.,* supersacks) will be allowed outdoors, as long as they are kept closed and are in sound condition, and are managed within storage units (*e.g.,* on concrete pads) that can contain, drain and allow removal of leaks, spills, and accumulated precipitation, and can prevent run-on into the unit. These conditions are intended to assure management commensurate with the secondary material's classification as a valuable feedstock, rather than as a waste. Put another way, the conditions assure both that the material is being managed comparably to other material inputs used in fertilizer manufacture, and that the secondary materials will not be discarded via haphazard management that allows wholesale environmental release of the material, so becoming ''part of the waste disposal problem''. *American Mining Congress* v. *EPA,* 824 F. 2d 1177, 1193 (D.C. Cir. 1987); *Association of Battery Recyclers* v. *EPA,* 298 F. 3d 1047, 1056 n. 6 (D.C. Cir. 2000).

One-time notice. Under the proposed rule, generators would have had to identify in their one-time notices to regulatory agencies the estimated annual quantities of excluded materials that they expected to ship to each fertilizer manufacturer. Some commenters objected to this condition on the grounds that such information would be speculative, commercially sensitive, and of questionable use to regulatory agencies. EPA agrees, largely for the reasons offered by the commenters, and has removed this element of the one-time notice condition from the final rule.

Certification. The proposed rule specified that generators using the conditional exclusion in today's rule would need to ensure that each shipment of excluded material off-site to another state was accompanied by a certification stating that the receiving state is authorized to administer the provisions of this rule. The implication

of this proposed provision was that out-of-state shipments of excluded material would only have been allowed if the receiving state had adopted and obtained authorization from EPA to implement these rules. Several commenters objected to this provision, arguing that shipments to states not authorized for this rule should be allowed, provided the materials are managed as hazardous wastes once they enter the receiving state. EPA agrees with these commenters, and has removed this certification provision from the final rule language.

3. Other Provisions

Burden of Proof. The proposed rule contained a provision stating that in an enforcement action, the burden of proof in establishing conformance with the conditions in § 261.4(a)(20) shall be on the generator, intermediate handler or manufacturer claiming the exclusion. One commenter correctly noted that this provision is redundant with the provision in § 261.2(f), which also addresses assigning burdens of proof (both the burden of going forward and the ultimate burden of persuasion, *see* 50 FR at 642) when conditional exclusions are involved. The proposed provision has therefore been deleted from the final rule.

Unit Closure. Today's final rule specifies that storage units (*e.g.,* tanks and containers) used only to store zinc-bearing hazardous wastes before a conditional exclusion takes effect (*i.e.,* before the facility owner/operator submits the one-time notice provided under § 261.4(a)(20)(ii)(B)), and that will be used thereafter only to store secondary material excluded under today's rule, will not be subject to the closure requirements of 40 CFR part 264 (for units at permitted facilities) or Part 265 (for units at interim status facilities). This provision is intended to address situations where units such as tanks that have been used to store hazardous wastes would be required under the existing regulations to go through RCRA closure before storage of the excluded material could commence. As explained in the preamble to the proposed rule, the existing regulations require closure of units within 90 days of receiving the final volume of hazardous waste (*see* § 264.113(a) and § 265.113(a)). In the case of facilities affected by today's rule, this would mean that for units such as tanks that have been storing zinc-bearing hazardous wastes, the owner/operator would need to remove all waste residues and other contamination from the unit, in order for the unit to then commence storing the identical material under the terms of the conditional exclusion. We believe that requiring closure under these circumstances would serve little, if any environmental purpose, and today's rule explicitly provides that in these situations storage units will not be subject to RCRA closure requirements.

Although these storage units will not be required to undergo closure according to the RCRA hazardous waste regulations, when the use of such a unit for this purpose is ultimately discontinued for some reason, the Agency expects that owner/operators will take common-sense steps to decontaminate and decommission the unit. We encourage owner/operators in these situations to consult with regulatory agencies as to the best way to ensure that such units and their surroundings are cleaned up properly.

EPA wishes to emphasize that relieving storage units from closure requirements in these situations will not relieve facility owner/operators of their responsibility to respond to any releases from such units during their operational life. As explained elsewhere in this preamble, not responding to such releases could be considered an act of illegal disposal under RCRA, and could thus be subject to enforcement action under RCRA section 3008(a), which could impose penalties, as well as require any necessary cleanup actions. The conditional exclusion also will not affect a facility owner/operator's corrective action obligations under RCRA section 3004(u) or section 3008(h). If necessary, other federal or state remedial authorities may also be used to address such releases. We also note that the facilities operating under the terms of today's conditional exclusion will remain subject to regulatory oversight by authorized states and EPA, and as such we expect that environmental conditions at these facilities will continue to be scrutinized by regulatory personnel. Another consideration for not requiring RCRA closure in today's rule is that storage in land-based units (e.g., outdoor piles) will not be allowed under the conditional exclusion. Generally, land-based units are more likely to have releases and are often more difficult to remediate. We thus believe, for the reasons cited above, that eliminating the closure requirement for storage units at facilities affected by today's rule will not compromise environmental protections at these facilities.

4. Implementation and Enforcement

Implementation. The preamble to the proposed rule discussed and requested comments on several issues relating to implementation of this rule once it takes effect (65 FR at 70966–70967). These issues addressed the potential regulatory consequences of the rule on permitted and interim status RCRA facilities, and how the rule would be enforced. EPA has not made any specific regulatory changes in the final rule to address these issues, since we believe they can be satisfactorily resolved by the following explanation.

One key issue has to do with the effects of the rule on facilities that currently have RCRA permits or interim status, and are managing hazardous wastes that will become conditionally excluded under this rule. Under one scenario, a facility that manages a variety of hazardous waste materials, including some that become excluded under this rule, would be affected only to the extent that certain units or procedures at the facility would no longer be subject to hazardous waste regulations. A somewhat different scenario could involve a facility whose hazardous wastes all become conditionally excluded from regulation when this rule takes effect (*i.e.,* the facility no longer operates any hazardous waste management units).

One idea discussed in the proposal was to amend the current regulations to automatically terminate permit conditions, permits and/or interim status at facilities where hazardous waste management units or activities become de-regulated under today's rule. This could eliminate the need for regulatory agencies to process permit modifications or administratively terminate permits or interim status for those facilities. One state agency commenting on the proposal argued, however, for maintaining a government role in managing these facility transitions, asserting that automatically terminating permit conditions would not provide adequate oversight over facilities in these situations. Although cases like this are expected to be relatively few in number (perhaps only one facility in the nation will potentially be able to have its RCRA permit terminated because of this rule), we agree with the state agency commenter that making the transition to non-permitted status may not be entirely straightforward, especially when such facilities are undergoing cleanup actions under RCRA authorities. Thus, we concur that there should be some regulatory agency oversight in changing a facility's permit or interim status obligations under these regulations, and today's rule does not contain any regulatory provision for automatically terminating permits, permit conditions or interim status at

facilities affected by this final rule. We believe that making these changes at affected facilities can be done efficiently under current authorized state administrative procedures for modifying or terminating a facility's RCRA permit or interim status.

Another potential implementation issue that could arise has to do with ensuring cleanup of historic contamination problems at facilities that may no longer need permits or interim status once the conditional exclusion takes effect. An example might be a facility with a RCRA operating permit that is working to remediate ground water contamination under the conditions of the permit. While the facility's operating permit may no longer be needed (since it is no longer actively managing hazardous waste), the owner/operator's obligations to remediate the contamination problems at the facility would not be affected by a change in the facility's operating status. In these situations, the authorized states would have the flexibility to address the facility's cleanup obligations by either maintaining in effect the corrective action-related provisions of the permit, or by using alternative federal or state enforcement mechanisms that may be available.

Enforcement. The exclusion in today's rule for hazardous secondary materials (§ 261.4(a)(20)) will take effect once a generator, intermediate handler or manufacturer provides notice to the appropriate regulatory agency of his/her intent to begin using the exclusion. There is no requirement for the regulatory agency to formally approve or otherwise act on such notices, though some state agencies may wish to do so.

The party claiming the conditional exclusion will be responsible for maintaining the exclusion by ensuring that all of the conditions are met. In the event that a condition is not met, the facility owner/operator will need to remedy the situation as soon as possible in order not to jeopardize the exclusion. Should there be any questions as to whether the facility has properly maintained its exclusion, it will be the responsibility of the owner/operator to demonstrate that the conditions have been and are being met. *See* section 261.2(f), discussed earlier. If necessary, the overseeing regulatory agency may use RCRA inspection and information collection authorities to assist in establishing whether or not a facility is meeting the exclusion conditions.

Facilities that claim the exclusion but fail to meet one or more of its conditions may be subject to enforcement action. For example, if a facility claiming the conditional exclusion failed to store secondary material in accordance with one or more of the conditions, the facility would in effect automatically lose its exclusion, and EPA or an authorized state agency could take enforcement action (under RCRA section 3008(a)), since the facility would likely then be violating hazardous waste regulatory requirements. In these situations a range of specific enforcement actions might be taken. In less serious cases the facility might simply be required to promptly remedy the situation, though fines or other penalties could also be assessed if appropriate. In especially serious cases the facility could be ordered to obtain a RCRA permit and comply with all applicable hazardous waste regulations.

As a general matter, if a facility fails to meet a condition of the exclusion it will not necessarily affect the regulatory status of the secondary material at other facilities. For example, if a fertilizer manufacturer's facility were to lose its exclusion, the facility generating the secondary material would typically be allowed to retain its exclusion, provided that he or she continues to meet the applicable conditions. In such a case, the manufacturer would need to be in compliance with applicable hazardous waste regulations in order to accept any further shipments of excluded (or non-excluded) material from a generator.

With regard to enforcement, it should also be noted that the conditional exclusion in today's rule will not affect a facility owner/operator's obligation to promptly respond to and remediate any releases of excluded secondary material that may occur at the facility. An accident, for example, could rupture or otherwise damage a tank or container, causing spillage of material onto soils. If such released material were not cleaned up promptly, the owner/operator would be subject to enforcement action for illegal disposal of waste. *See* § 264.1(g)(8)(iii).

Today's conditional exclusion will not affect the rights of concerned citizens to bring to regulators' attention any circumstance that might aid authorities in their monitoring and enforcement efforts. A concerned citizen also may file a suit under RCRA section 7002 against a party for violations that may result from failure to meet any of the conditions in this rule. Moreover, imminent and substantial endangerment provisions under Section 7003 of RCRA will continue to apply to conditionally excluded secondary materials as a safeguard, since those materials remain a statutory solid waste. Thus, EPA or an authorized State can act in the unlikely event of circumstances which may endanger human health or environment.

5. Response to Comments

EPA received a number of comments addressing the general issue of whether or not a conditional exclusion from hazardous waste regulations is appropriate in the context of this rulemaking. One set of commenters presented arguments contending that EPA has no legal jurisdiction at all under RCRA to establish conditions or otherwise regulate hazardous secondary materials that are recycled to make zinc fertilizers. On the other hand, a substantial number of commenters expressed support for EPA continuing to regulate these materials as hazardous wastes, and called for adding a number of new, more stringent regulatory controls and restrictions over these waste materials.

With respect to comments challenging EPA's authority to classify hazardous secondary materials used as ingredients in fertilizer as solid wastes at all, EPA notes first that this issue has been long-settled, and was not reopened in this rule. EPA's rules classifying hazardous secondary materials used in a manner constituting disposal—which includes use as fertilizers, or as ingredients in fertilizers—were promulgated in 1985. 50 FR at 664, 666–67. These use constituting disposal rules were never challenged.[2] EPA did not reopen the issue of jurisdiction for comment in this proceeding. 65 FR at 70959 n. 2. Thus, EPA believes that these comments are untimely.

In the event that response is considered necessary, however, EPA believes that it has ample jurisdiction to classify hazardous secondary materials used to produce zinc fertilizers as solid wastes. We also note that the following discussion applies to authority over uses constituting disposal as defined in section 261.2(c)(1), and does not deal with, or apply to, any other type of recycling. First, the generator of the hazardous secondary material is an unrelated entity getting rid of its secondary materials to a different industry sector. Thus, when one entity takes a secondary material for which it has no continuing use and transfers it to an unrelated entity, the materials can be viewed as discarded by that first entity.

[2] EPA promulgated the rules requiring products placed on the land which are produced from hazardous wastes to meet LDR requirements in 1988, which rules also contained the provision exempting K 061-derived zinc fertilizers from this requirement. 53 FR at 31212 (August 17, 1988). There were likewise no challenges to these rules raising the question of EPA's jurisdiction to adopt the provisions.

See *Owen Electric Steel Co.,* v. *EPA,* 37 F. 3d 146, 150 (4th Cir. 1994) EPA properly classified secondary material as a solid waste ''because the slag is sold to others for use in roadbed construction, it is not 'destined for beneficial reuse or recycling in a continuous process *by the generating industry itself*', quoting *AMC I*, 824 F. 2d at 1186 (emphasis in original). See generally *American Petroleum Institute* v. *EPA (''API II''),* 216 F. 3d 50__, 58 (D.C. Cir. 2000); *Association of Battery Recyclers* v. *EPA,* 208 F. 3d 1047, 1059–60 (D.C. Cir. 2000); *American Petroleum Institute* v. *EPA,* 906 F. 2d 729, 741 (D.C. Cir. 1990)[3]; *Specialty Steel Mfrs. Assn* v. *EPA,* 27 F. 3d 642, 646 (D.C. Cir. 1994).

Recycling via land application is a further indication of discarding. As EPA has stated years ago, ''Use constituting disposal involves as a practical matter the disposal of wastes. The wastes are being gotten rid of by placing them directly on the land.'' 53 FR at 31198; *see* also 48 FR at 14484 (April 4, 1983) (''these practices are virtually the equivalent of unsupervised land disposal''). When placed on the land, hazardous secondary materials and the hazardous constituents they contain (few, if any, of which contribute to the recycling activity) could escape via all conceivable exposure pathways—air, runoff, leaching, even (as here) foodchain uptake. Such activities can certainly be viewed as discarding that is ''part of the waste disposal problem.''

The statute supports this position. *See* RCRA section 3004 (l) (use of ''waste or used oil or other material, which is contaminated with dioxin or any hazardous waste * * * for dust suppression or road treatment is prohibited'')[4]; H.R. Rep. No. 198, 98th Cong., 1st Sess. at 46, 67–68 (hazardous waste-derived products that are placed on the land are to be the special object of EPA scrutiny in implementing subtitle C); see also *Association of Battery Recyclers* v. *EPA,* 208 F. 3d 1047, 1059–60 (recycling via uses constituting disposal pose even greater potential risks than conventional land disposal, and thus justify stricter regulation). As the Agency concluded in 1988 (in another determination that was never challenged), ''To say that Congress did not intend to control these use constituting disposal situations under RCRA is to say that Congress had no intention of controlling such damage incidents as the Times Beach dioxin spreading incident where a group of communities were rendered uninhabitable as a result of use of a distillation botto[m] mixed with used oil as a dust suppressant. No credible reading of the statute would authorize this type of conduct.'' 53 FR at 31198. Indeed, some of the fertilizers addressed by today's rule contain dioxin, which comes from the hazardous secondary materials used as a source of zinc. EPA does not consider it plausible that Congress prohibited the use of dioxin-containing secondary materials as dust suppressants, but denied EPA the authority to even consider the question of dioxin-containing hazardous secondary materials used as fertilizers—the more potentially harmful practice given the possibility of food chain contamination.

EPA notes, in addition, that many of the conditions in today's rule serve to demarcate legitimate recycling. The hazardous constitutent levels for fertilizers, for example, are drawn from typical levels in commercial zinc micronutrient fertilizers. To the extent that fertilizers contain non-nutritive hazardous constituents which come from hazardous secondary materials in concentrations significantly in excess of these levels, the recycling practice can be viewed as simply discarding those materials and constituents. *American Petroleum Inst. II,* 216 F. 3d at 58.

This is not to say that EPA lacks discretion to classify some hazardous secondary materials, and products derived therefrom, which are used in a manner constituting disposal as not being solid wastes. The facts justifying such discretion here (stated broadly) are (a) the usefulness of the materials as a source of zinc for fertilizer; (b) the similarity of hazardous constituent levels in hazardous and non-hazardous feedstock materials, and the fact that zinc fertilizers made from hazardous secondary materials are indistinguishable from those made from non-hazardous materials, and are processed identically (*see, e.g.* 46 FR at 44971 (Aug. 8, 1981) (EPA's first announcement of the principle that identity of waste-derived and non-waste derived products justifies cessation of RCRA regulation); and (c) management practices commensurate with the idea that the secondary materials are being managed as a valuable commodity rather than as a waste. The conditions adopted in today's rule are designed to assure that this fact pattern actually occurs, and (as noted above) are further designed to assure that legitimate rather than sham recycling occurs.

As mentioned previously, a number of commenters did not support a regulatory exclusion of any kind for hazardous secondary materials used to make fertilizers, and instead favored maintaining and expanding the current hazardous waste regulatory controls over these materials. Among the suggestions for increased regulatory controls were greatly enhanced reporting by waste generators, middlemen and fertilizer manufacturers with regard to all shipments of hazardous wastes, including reporting on the composition of both the wastes that are used and of the fertilizers that are produced from those wastes. These additional reports would be required as part of the RCRA biennial reporting system (*see* § 262.41). More thorough testing for a wider range of hazardous constituents was also suggested, as was labeling of fertilizer packaging to indicate that the fertilizer was made from hazardous waste.

As discussed earlier, we believe that maintaining RCRA regulatory controls over all hazardous secondary materials

[3] Commenters argued that *API I* was not on point because EPA there had compelled recovery of K 061 by establishing a treatment standard mandating metals recovery, and so had simply forced the recycling of material that would otherwise be disposed of, so that the material could be regarded as ''discarded''. Although it is correct that the opinion states that K061 was subject to a treatment standard of mandatory metal reclamation, 906 F. 2d at 741, it is incorrect that steel mills were otherwise disposing of their electric arc furnace dust, or that EPA had through its treatment standard converted a disposed-of waste into a recycled secondary material. Metals reclamation of K 061 was widespread at the time EPA adopted the treatment standard, and EPA based the standard on this well-established, existing practice. *See* 53 FR 11742, 11752 (April 8, 1988) (high temperature metal recovery currently in use by at least four domestic facilities to recover zinc from K061, and the proposed treatment standard is taken from measurements from one of those existing operations). It also should be noted that the recycling practice at issue in *API I* is arguably more continuous than the types of practices involved in this rulemaking. When electric arc furnace dust is smelted for zinc recovery, it is captured as a dust by steel mill baghouses, conveyed to a storage bin at the mill (usually by conveyor belt, but sometimes pneumatically), and then shipped directly by truck or rail to the purchasing smelter. Typical storage time at the generating steel mill is two days or less, due to limited storage bin capacity. In contrast, storage times at generators of secondary materials used eventually as a zinc source for fertilizer often is up to 90 days. These generators also often deal through intermediary brokers who find an end use for the secondary material.

[4] Since dioxin is a chemical contaminant, and is not itself a waste, section 3004 (l) thus states that use of contaminated used oil which is recycled via use as a dust suppressant—an example of a use constituting disposal—is prohibited. Congress, by placing this prohibition within section 3004 (which applies only to solid and hazardous wastes) could take this action only if it considered this form of recycling to involve a solid waste. It also bears mention that use of used oil contaminated with dioxin as a dust suppressant is not per se a type of sham recycling. Dioxins bind tenaciously with soils, and so contribute to the dust suppression use. The Congressional prohibition in section 3004 (l) thus applies to a form of recycling, not to illicit disposal. Note also that today's rule deals (in part) with the issue of dioxin contamination in the secondary materials used to produce zinc fertilizers.

used to make zinc fertilizer is counter-productive, in that it discourages legitimate, safe recycling of these valuable materials, and can actually encourage production of fertilizers with higher contaminant levels . Adding further regulatory requirements would almost certainly ensure that this recyling practice would be eliminated completely, which we do not believe would be beneficial environmentally. With regard specifically to requiring additional testing of wastes and materials, the commenters did not supply any data to demonstrate why such additional testing is necessary, or any evidence indicating that fertilizers which meet today's exclusion levels are likely to contain meaningful levels of contaminants other than those for which we have established limits. EPA thus sees no reason to impose such additional requirements without a clear rationale for doing so.

With regard to commenters who supported labeling of hazardous waste derived fertilizer products, we note that there is no legal authority under RCRA to impose such a labeling requirement on products that are made from legitimately recycled hazardous wastes or conditionally excluded secondary materials. We also question the appropriateness of requiring such labels, since they would likely unnecessarily stigmatize products that are identical in composition to fertilizers made from other types of materials.

D. Conditional Exclusion for Zinc Fertilizers Made From Excluded Hazardous Secondary Materials

As mentioned previously, today's rule finalizes the same basic approach as was proposed with regard to setting conditional limits on contaminants in zinc fertilizers made from recycled hazardous secondary materials. This rule therefore establishes specific limits on heavy metals and dioxins that may be contained in these zinc fertilizers (the limits serving as the means for distinguishing wastes from fertilizer products under the conditional exclusion), and sets conditions for sampling, analysis and recordkeeping to verify compliance with these limits (i.e., to verify that excluded recycling is occurring). In effect, these conditions must all be met in order for zinc fertilizers made from hazardous secondary materials to be considered products, rather than wastes.

1. Hazardous Constituent Levels for Excluded Zinc Fertilizers

Today's rule establishes a new set of product specification limits for contaminants in zinc fertilizers made from hazardous secondary materials. Zinc fertilizers that meet these specification limits will in effect be considered products, rather than wastes.

The new exclusion limits in today's final rule address five metal contaminants—i.e., metals coming from zinc-containing hazardous secondary materials that are both non-nutritive and toxic (lead, cadmium, arsenic, mercury and chromium)—and dioxins (likewise non-contributing). In absolute terms, the exclusion limits for the five metals are numerically higher than the LDR treatment standards for those metals (*i.e.,* the ''universal treatment standards'' specified at § 268.48). However, direct comparisons between the two sets of limits are difficult to make. This is because the LDRs are measured according to a leachate extraction procedure (the toxicity characteristic leaching procedure, or TCLP—*see* § 261.24), while the new exclusion levels are expressed as total concentrations. Since the leachability of metal constituents varies according to a number of factors, it is difficult to predict the relationship between TCLP-measured levels vs. total concentration levels with any degree of certainty. To illustrate, the new exclusion level for lead in a 20% zinc fertilizer formulation would be 56 ppm, while the universal treatment standard for lead is 0.75 ppm (milligrams per liter). If in this case the tested sample contained 56 ppm total lead, the TCLP result could be either higher than 0.75 ppm, or lower if the lead was in (for example) a relatively insoluble compound form.

The exclusion limit for dioxins in today's rule is more stringent than the LDR standards, since dioxins are typically not ''underlying constituents'' subject to treatment in the secondary materials that are likely to be excluded under today's rule (*i.e.,* secondary materials that exhibit a hazardous characteristic—*see* § 268.40(e)). Because of this, and in light of the uncertainties inherent in comparing LDR standards for metals with the new exclusion levels, EPA considers today's exclusion levels to be generally more stringent than the LDR standards.

The product specifications in today's rule must be met for any zinc fertilizer that is made from excluded secondary materials. In this sense the two exclusions are linked—a manufacturer who uses the exclusion for hazardous secondary materials must meet the new, more stringent exclusion levels for the zinc fertilizers he or she produces. The LDR standards will continue to apply to any non-zinc fertilizer that is made from recycled hazardous waste.

It is possible under some circumstances that a zinc fertilizer manufacturer might choose not to use the conditional exclusion for hazardous secondary materials, and instead use fully regulated hazardous wastes as feedstock materials. This might happen, for instance, if the manufacturer has already obtained a RCRA permit and made the necessary investments to comply with hazardous waste regulations. In such a case the LDR standards would apply to the hazardous waste derived fertilizers. Such a manufacturer would have the option, however, of meeting the generally more stringent product specifications in today's rule if there were some incentive (*e.g.,* a marketing advantage) to do so.

To reiterate, today's conditional exclusions apply only to *zinc* fertilizers and the secondary materials used to produce them. Thus, if hazardous wastes are used to make non-zinc fertilizers, both the wastes and the fertilizers will be subject to applicable hazardous waste regulations (*see* § 262.20(a)).

2. Limits on Metal Contaminants

Table 1 presents the final limits on five metal contaminants in zinc fertilizers that are made from hazardous secondary materials:

TABLE 1.—LIMITS ON METAL CONTAMINANTS

Metal Constituent	Maximum allowable total concentration in fertilizer, per unit (1%) of zinc content
Arsenic	0.3 ppm
Cadmium	1.4 ppm
Chromium	0.6 ppm
Lead	2.8 ppm
Mercury	0.3 ppm

As noted in the table, these limits are expressed as total concentrations of the metal in the fertilizer product. The alternative of establishing limits based on a different type of test procedure, such as the TCLP used in the RCRA program to identify hazardous wastes, was not supported by any of the commenters on the proposal (one obvious reason being that satisfying a leach test would normally mean that the material is unusable as a fertilizer, since the nutritive metal would be bound up along with the hazardous constitutents). It should also be noted that the limits are tied to the percentage of zinc in the fertilizer. This is primarily because the zinc content of fertilizers varies widely. If the limits were not tied to the percentage of zinc in the product, it is possible that manufacturers could

comply with the limits simply by lowering the zinc content of the product, in effect diluting the contaminants with other ingredients. 55 FR at 70969.

These limits on metals are based on the levels of contaminants in commercial zinc fertilizers that have been well demonstrated as technically and economically practical, by using sound, relatively simple manufacturing techniques. They thus are reasonable levels for demarcating products from wastes. As explained in the preamble to the proposed rule, a widely-marketed zinc fertilizer formulation known as zinc sulfate monohydrate, or ZSM, was used as the basis for developing these limits. 55 FR at 70969.

EPA has made three substantive changes in finalizing the conditional limits for metal contaminants. One change was made in response to a commenter who suggested that additional sampling and testing for metal contaminants should be required whenever a change in manufacturing processes or ingredients is made that could significantly affect the amounts of contaminants in the fertilizer product. The Agency has added this condition to the final rule, since we believe it to be a reasonable precaution that prudent manufacturers would likely take in the normal course of production, even without such a regulatory provision. As such, we believe it a reasonable condition to demarcate products from wastes and to assure that legitimate recycling occurs.

Another substantive change that has been made to the proposed limits on metal contaminants is that the final rule does not include a limit for nickel. Several commenters expressed the view that the proposed limit on nickel (1.4 ppm per percent of zinc in the fertilizer) was unnecessary from an environmental perspective, in that nickel is generally less toxic than the five other metal contaminants, and EPA's background data did not reveal especially high levels of nickel in any of the fertilizer products that were studied [*see* ''Background Document on Fertilizer Use, Contaminants and Regulation'' (EPA 747–R–98–003, January, 1999)]. Some of these commenters also opined that setting a limit on nickel in the context of this EPA rulemaking could create an unnecessary and unwarranted perception that exposure to nickel generally poses serious human health and/or environmental risks.

EPA agrees that nickel is generally less toxic to humans than metals such as lead, cadmium, arsenic and others, and we acknowledge that our review of fertilizer contaminant data did not identify any fertilizer product with nickel at levels that could pose significant health or ecological risks. Further, the processing and filtering steps that are required to manufacture high-purity zinc fertilizers (such as ZSM fertilizers) remove nickel along with other metal contaminants. It is therefore highly unlikely that fertilizers which meet the RCRA contaminant limits for other metals (lead, cadmium, arsenic, mercury and chromium) would contain elevated levels of nickel.

Given that excessive levels of nickel are unlikely in zinc fertilizers that meet the limits for the other five metals in today's rule, and given the relatively lower toxicity of nickel as compared with those metals, the Agency is persuaded that specifying a limit for nickel in today's final rule would serve no real environmental or regulatory purpose. We have therefore removed the limit for nickel in today's final rule.

The third change that has been made to the proposed limits for metals is that the final conditional limit for arsenic has been lowered, from 0.6 ppm per unit of zinc, to 0.3 ppm. This change was made in response to a commenter who questioned the validity of certain data that were used to derive the numerical limit for arsenic. Specifically, the commenter noted that the proposed limit appeared to be based on test results that represented analytical detection limits, rather than actual measured levels of arsenic in tested fertilizers. Our further review of the data confirmed this to be the case, and we have therefore established an arsenic limit that more accurately reflects what we believe to be the actual levels of arsenic in ZSM fertilizers.

Response to comments. EPA received comments reflecting a wide range of viewpoints (in addition to those described above) regarding the proposed limits on metals in recycled zinc fertilizers. One group of commenters questioned the Agency's legal authority to establish any limits at all on contaminants in these fertilizers, arguing that recent court decisions have narrowed the scope of EPA's regulatory jurisdiction over this type of hazardous waste recycling (an issue addressed earlier in this preamble). Some of these commenters also argued that, legal issues aside, it is unnecessary to set any limits on fertilizer contaminants, since EPA's own studies have concluded that fertilizers are generally safe when used properly. Other commenters expressed the view that the technology-based limits (*i.e.* conditional levels reflecting demonstrated fertilizer production process capabilities) as proposed were unnecessarily stringent from a risk perspective, and that any such contaminant limits should be risk-based (*i.e.,* set at levels that are ''safe,'' based on an assessment of potential risks to humans and ecosystems). Some of these commenters further suggested that the risk-based guidelines for metal contaminants in fertilizers that were recently adopted by the Association of American Plant Food Control Officials (AAPFCO) (*see http://aapfco.org/SUIP25Aug08.htm*) could be used for this purpose. Other commenters expressed the view that the proposed limits for metals were not stringent enough, and should be set at the lowest levels that can be technically achieved. Some of these commenters further suggested that limits should be set for additional metals (*e.g.,* selenium, vanadium, beryllium, antimony). One commenter further argued that the limit on chromium should apply only to the more toxic, hexavalent form of chromium, rather than to total chromium as proposed.

EPA chose not to use risk-based limits in this final rule, primarily because we continue to believe that technology-based limits are more appropriate in the context of this rulemaking. Our rationale for using technology-based limits for metals in fertilizers—viz. as explained above, establishing a specification based on contaminant levels found in normal commercial fertilizers in order to reasonably distinguish products from wastes—was explained in detail in the preamble to the proposal, and many commenters supported the approach. Given that today's rule is an exclusion of these materials from being solid wastes, rather than an exclusion from being a hazardous waste (which would more naturally call for a risk-based justification), EPA continues to believe that this approach is reasonable. We did not receive any comments persuading us that the use of technology-based limits in the context of this rulemaking is inappropriate, technically difficult or unduly burdensome for industry.

Moreover, developing risk-based limits for zinc fertilizers would be a highly complex and resource intensive undertaking, and risk-based limits might actually allow contaminant levels in fertilizers to increase substantially, which we do not believe is an environmentally desirable result. To illustrate, Table 2 compares today's exclusion levels with AAPFCO's recommended standards (which were developed from risk assessment studies) for five metals in micronutrient fertilizers, assuming a 35.5% zinc content that is typical for zinc sulfate monohydrate fertilizers:

TABLE 2.—COMPARISON OF RCRA EXCLUSION LEVELS WITH AAPFCO RECOMMENDED GUIDELINES

Metal	RCRA Exclusion Levels (ppm)	AAPFCO Guideline (ppm)
Arsenic	10.7	3,976
Cadmium	49.7	2,947
Chromium	21.3	No limit
Lead	99.4	16,437
Mercury	10.7	213

It should be noted that the AAPFCO recommended standards listed in Table 2 were based primarily on a risk assessment study commissioned by The Fertilizer Institute (an industry trade organization). As with other similar risk assessments, including EPA's (''Estimating Risk from Contaminants Contained in Agricultural Fertilizers,'' September 1, 1999; Web site address *www.epa.gov/epaoswer/hazwaste/recycle/fertiliz/risk/report.pdf*), a number of simplifying assumptions and models were used to address data gaps and other uncertainties inherent in that analysis. EPA does not necessarily accept or dispute the validity of the AAPFCO recommended levels as accurate indicators of potential risks; any such technical judgment would of necessity have to be based on additional data and more rigorous analysis. We note, however, that the general findings of EPA's risk assessment did not differ dramatically from those of the TFI-sponsored study. In any case, we simply wish to underscore the point that any risk-based standards for fertilizer contaminants, including those adopted by AAPFCO, have a considerable uncertainty factor associated with them.

The comparison in Table 2 indicates that risk-based limits for zinc fertilizers are likely to be far higher than the levels of contaminants that are now found in many commonly marketed products. At best, therefore, risk-based standards would have very little effect in terms of actually limiting the amounts of toxic metals in fertilizer products. In fact, as noted already, such standards could allow contaminant levels in zinc fertilizers to increase substantially over current levels. From an environmental perspective, and in light of the public policy debate that has recently taken place over fertilizer contamination, we believe such a result to be inappropriate from an environmental and public policy perspective. In EPA's view, regulatory efforts to control contaminants in fertilizers should be focused mainly on ensuring that fertilizers remain relatively clean, rather than allowing fertilizers to become increasingly contaminated to the point where they may begin to pose unacceptable human health or ecological risks. More importantly for the purposes of this rulemaking, risk-based levels are inappropriate as a measure of distinguishing zinc fertilizer products from wastes, since they bear no relation to the levels that are found in currently marketed zinc fertilizers, and therefore bear no relation to the question of whether the waste-derived fertilizers should be viewed as being or containing waste.

As for the comment suggesting that it is unnecessary to place any limits on contaminants in fertilizers because EPA's studies indicate fertilizers are generally safe, we disagree. In our view, it would be difficult, if not unconscionable, to assure the public and other stakeholders as to the safety and legitimacy of using hazardous secondary materials—*i.e.,* what otherwise are hazardous wastes—to make fertilizers without having any means of limiting contaminants in the resulting fertilizer products. Moreover, opportunities for sham recycling obviously would become rife under such an approach.

Some commenters expressed support for EPA's proposal to use technology-based limits for metals in recycled zinc fertilizers, but suggested that lower limits can and should be achieved. One industry commenter agreed, noting that his company consistently produces pharmaceutical grade zinc sulfate monohydrate with lower contaminant levels than those proposed, and that other companies could meet similar levels.

EPA does not question the assertion that lower contaminant levels than those proposed are technically achievable through the use of more refined (and more expensive) manufacturing processes. However, it is not the Agency's intent to set these limits at the very lowest levels that can be technically achieved. Cf. 63 FR at 33784–33785 (June 19, 1998) (explaining a similar benchmark approach for establishing levels to distinguish products from waste fuels based on comtaminant levels found in normal fossil fuels, rather than the very ''cleanest'' or ''dirtiest'' fossil fuels). The Agency's fertilizer risk assessment indicates that the proposed limits are considerably below levels that we estimate (albeit roughly) to be safe for humans and ecosystems. Thus, the actual environmental benefit to be gained from more stringent limits would likely be negligible. Further, we find highly questionable the notion that there would be any real public benefit in requiring zinc fertilizers to be suitable for pharmaceutical use, or that such exceptional purity (necessary for such a specialized use) is a reasonable means of demarcating fertilizer products from wastes. Finally, setting stricter limits in this rule would almost certainly force most manufacturers to either raise prices for finished zinc fertilizer products, or avoid regulatory requirements altogether by simply switching to alternative feedstock materials that are unregulated by RCRA. We see little if any benefit in either outcome. We have therefore not adjusted the final limits for metals in response to these comments.

Some commenters expressed the view that this rule should set limits for additional metals such as selenium, vanadium, beryllium, antimony and others, citing the possibility that potentially harmful levels of such metals could occur in zinc fertilizers. These commenters did not, however, provide any data to establish that elevated levels of such metals occur in ZSM products (or any other types of fertilizers), or that the purification techniques used in manufacturing ZSM would fail to remove these metals. We note, too, that the data we have reviewed to date on fertilizer contaminants did not indicate the presence of elevated levels of such additional contaminants in zinc fertilizers or any other fertilizer products. We are therefore not persuaded that there is any real need to set limits on additional metals in this rule, and the final rule addresses only the five metal constituents listed above.

A few commenters questioned the proposed limit on chromium (0.6 ppm per unit of zinc), contending that it would be unnecessarily stringent since it does not differentiate between the hexavalent and trivalent forms of chromium, and only the hexavalent form is a potential threat to human health. One commenter also stated that there is no basis or precedent in RCRA to establish controls on the less toxic forms of chromium. That commenter argued further that new fertilizer manufacturing techniques under development may be unable to meet the proposed limit if it applied to total chromium, but could presumably meet that level if it applied only to the hexavalent form.

EPA does not dispute that the potential adverse health effects from exposure to hexavalent chromium are considerably greater than for trivalent chromium, although we do not agree with the commenter's assertion that RCRA controls only apply to hexavalent chromium. As one example, the listing

of chromium as a ''hazardous constituent'' in Appendix VIII of 40 CFR part 261 does not distinguish between the hexavalent and trivalent forms. Similarly, the ''land disposal restrictions'' treatment standard for chromium (see § 268.48) applies to total chromium. There are a number of other examples, as well. We acknowledge, however, that some regulatory provisions of RCRA do make risk distinctions between hexavalent and trivalent chromium. One example is the exemption from the definition of hazardous waste for certain wastes that, upon specific demonstration, are shown to contain only trivalent chromium (see § 261.4(b)(6)).

The proposed limit for total chromium (0.6 ppm per unit of zinc) represents the level that has been demonstrated as readily achievable in ZSM fertilizers, including a small margin to account for variabilities in the manufacturing process. The commenter who proposed applying the limit only to hexavalent chromium did not question EPA's assertion that this level can be easily achieved in ZSM products, but instead referred to an unspecified ''advanced technology'' for making zinc fertilizer that is not designed to remove these contaminants. We note that the commenter did not supply any description of this advanced process, or submit any data to substantiate the claim that this technology would be unable to meet the proposed limit for total chromium. In fact, it is unclear from the commenter's discussion that this unspecified technology has been actually used in full-scale manufacture of zinc fertilizers. We also note that there is little, if any, available ZSM analytical data that differentiates between the different forms of chromium, although the basic chemical properties of chromium suggest that the presence of hexavalent chromium in ZSM fertilizers is likely to be relatively rare. In any case, it is certainly not EPA's intent in this rule to stifle development of new technologies for legitimate recycling in the fertilizer industry. However, without additional data and/or considerably more substantiation of the commenter's claims it is difficult for the Agency to conclude that the proposed limit on chromium is inappropriate or will otherwise be a hardship for zinc fertilizer manufacturers. The final limit on (total) chromium is therefore unchanged from the proposal.

3. Limit on Dioxins

Today's rule finalizes the proposed limit of eight (8) parts per trillion of dioxins in zinc fertilizers, as measured according to the ''toxicity equivalence'' or TEQ method (see ''Estimating Exposures to Dioxin-like Compounds'' (EPA publication #600/6–88/005 Ca)). The eight part per trillion limit is based on EPA's estimate of average national background levels of dioxins in soils (*see* EPA report ''Estimating Exposure to Dioxin-Like Compounds, Review Draft'' (EPA/600/6–88/000Ca; June 1994)). EPA has included dioxins in its list of priority ''persistent, bioaccumulative and toxic'' (PBT) chemicals that are of particular concern environmentally and are the focus of new control strategies being developed by EPA. Further information on the Agency's overall strategy for addressing PBTs can be found on our Web site (*see www.epa.gov/pbt.htm*).

Significant levels of dioxins (in the hundreds of parts per trillion range) have been found in zinc oxysulfate fertilizers made from K061 hazardous wastes. EPA's fertilizer risk assessment concluded that exposure to dioxins in fertilizers at these levels is unlikely to pose unacceptable risks, based on currently available dioxin health effects information. However, available data on dioxin levels in fertilizers are admittedly very limited, so it is possible that dioxin levels in some fertilizer products could be higher than the current data suggest. It is also possible that, when finished, the Agency's ongoing reassessment of dioxin health effects could conclude that even more aggressive measures to control this class of PBT compounds are warranted. Because of these uncertainties, and because EPA is committed generally to a multifaceted national strategy aimed at reducing PBTs in the environment, we believe it is appropriate and prudent to limit dioxins in fertilizers in today's final rule. Moreover, given the presence of dioxins in at least some of the hazardous secondary materials used to produce zinc fertilizers, the extreme health risks associated with dioxins, and the fact that they contribute nothing to the efficacy of fertilizer products, some limit on dioxins is necessary for distinguishing product fertilizers from wastes, and to guard against sham recycling.

As explained in the preamble to the proposed rule, EPA chose to use a ''background'' approach to setting a limit for dioxins in zinc fertilizers primarily because we do not have sufficient data on dioxin levels in zinc fertilizers to establish a technology-based limit, which would be consistent with the approach used in this rulemaking to set limits for metals. The limited data that are available on dioxin concentrations in zinc sulfate monohydrate (the zinc fertilizer formulation used to develop the technology-based limits for metals) indicate dioxin levels of approximately one part per trillion (TEQ) or less. We did not receive any additional data from commenters with regard to dioxin levels in ZSM products, nor did any commenters offer persuasive evidence that the 8 ppt limit would be technically or economically difficult for ZSM producers to achieve in their products. Thus, we believe that the 8 ppt limit can be (and is being) easily achieved by industry, should not impose any significant economic burden on zinc fertilizer manufacturers, and serves as a reasonable level for distinguishing fertilizer products from wastes.

Response to comments. Many of the commenters on the proposal cited the need to limit dioxins in fertilizers as one of their primary concerns with regard to this rulemaking. Most of these commenters argued for either a more stringent limit than was proposed (e.g., a technology-based limit), or a complete ban on the recycling of any dioxin-containing waste material to make fertilizers. Some commenters suggested that a limit based on average national soil background levels would be appropriate only if it were based on ''pre-industrial'' background levels (which would presumably be lower than eight parts per trillion). In contrast, a number of other commenters opposed setting any limit on dioxins in this rule, arguing that it would increase costs to industry and would have little or no net environmental benefit. Other commenters suggested that if a limit on dioxins in fertilizer is established it should be risk-based, rather than based on national background soil levels. One commenter suggested that a dioxin limit of 100 parts per trillion would be more reasonable and appropriate than the proposed limit, though the basis for that specific limit was not provided.

None of the commenters who argued for more stringent limits on dioxins in this rule offered any scientific evidence establishing an environmental need for such additional controls, or questioning EPA's basic risk findings with regard to dioxins in zinc fertilizers. In addition, it is likely that more stringent limits would raise costs for this rule considerably. We see no reason to impose such additional costs without a convincing environmental rationale for doing so; thus, we chose not to adopt more stringent controls for dioxins in this final rule.

We disagree with the commenters who questioned the need for any limit on dioxins in this rule. As explained above, we believe that a limit on dioxins

is appropriate as part of the Agency's broader strategy to control PBT chemicals in the environment, and should moreover have minimal cost impacts on industry. We also believe that a limit on dioxins in this rule is useful in distinguishing products from wastes, and in guarding against sham recycling of dioxin-containing secondary materials (dioxin being a non-contributing hazardous constituent in fertilizers). We do not agree with the commenters who suggested using a risk-based approach to setting limits on dioxins in this rule, for reasons similar to those in the preceding discussion of risk-based levels for metal contaminants. A risk-based limit on dioxins would likely be much higher than the actual levels of dioxins in high-quality zinc fertilizer, or the national soil background level of eight parts per trillion. Thus, a risk-based limit on dioxins would likely allow dioxin levels in these fertilizer products to increase greatly, to the point where they could pose unacceptable risks. EPA does not believe this to be a desirable environmental result, particularly in light of the current scientific uncertainty over the health effects of dioxins.

We also chose not to adopt a limit of 100 parts per trillion, as was suggested by one commenter. That commenter did not offer any scientific, technical or economic basis for this particular limit, nor did the commenter offer any evidence to refute our assumption that the eight ppt limit would be easily achievable by manufacturers of high-quality zinc fertilizers. We thus see no reason to adopt this higher, alternative limit for dioxins in this rule.

IV. Mining Wastes Used To Make Fertilizers

In the preamble to the proposed rule, EPA discussed and requested comment as to the regulatory status of certain fertilizers that are made from mining wastes which exhibit a hazardous characteristic (*e.g.,* are toxic when tested according to the TCLP, cited earlier). One particular iron fertilizer product, which is widely marketed to consumers through retail outlets under the name ''Ironite,'' has been identified as being made from such material. This product is notable for containing approximately 4400 parts per million of arsenic—to our knowledge, the highest arsenic levels of any fertilizer, by several orders of magnitude. At issue is the fact that the hazardous mining wastes used to make Ironite are presently exempt from regulation as hazardous wastes, under the so-called Bevill exemption in the RCRA statute (section 3001(b)(3)(A)(ii)).

In the proposed rule we invited comment as to whether EPA should undertake a regulatory initiative to remove the current exemption for this type of fertilizer. Most of the commenters on the proposed rule supported the idea of regulating Ironite (and other similar fertilizers, though we are not aware of any) under the same set of regulations that apply to hazardous waste derived fertilizers. Several commenters, in fact, expressed strong concerns as to the potential adverse health effects of Ironite, particularly acute effects that could result from direct ingestion (*e.g.,* by children) of Ironite products. Some of these commenters also questioned the validity of the studies that have been cited by the Ironite Products Company as demonstrating the safety of their products. One commenter, however (the American Mining Association), disputed the idea that Ironite is unsafe, suggesting that EPA's actual motive in this regard is to ''backdoor'' its way into narrowing the scope of the Bevill exemption. These commenters also cited the argument made by others that EPA has no legal authority at all to regulate hazardous wastes that are recycled to make fertilizers, let alone mining wastes that are specifically exempt from hazardous waste regulations.

EPA continues to believe that concerns regarding exposure to arsenic in Ironite products are worthy of serious consideration, particularly since it is a widely marketed consumer product intended for use by home gardeners and others. As such, the potential for misuse and/or accidental exposure (especially to children) cannot be discounted. At the same time, however, we recognize that there are technical issues associated with estimating risks from exposure to contaminants in Ironite that merit further study before the Agency can reach any definitive conclusions as to the potential risks of the product. For example, there has been some controversy regarding the bio-availability of the arsenic and lead compounds in Ironite and Ironite-amended soils.

EPA's Office of Solid Waste is partnering with EPA's Office of Research and Development and EPA's Region 8 Office to further evaluate the potential human health and environmental risks that may occur from the use of Ironite fertilizer. We expect that these efforts will provide the Agency with a much clearer sense of the environmental implications of Ironite use, and whether or not there is a need to pursue regulatory action to impose RCRA controls. The Agency will be coordinating this effort with state environmental and public health agencies and others who may have conducted similar studies or may have supporting analyses underway. Preliminary results of EPA's evaluation should be available in calendar year 2003. We hope to announce the Agency's follow-up regulatory strategy with regard to specific mining waste-derived fertilizers, such as Ironite, subsequently.

V. State Fertilizer Regulatory Programs

Virtually all States have regulatory programs for fertilizers, which are usually administered by state agricultural agencies. Traditionally, the primary focus of these regulatory programs has been to ensure that fertilizers are accurately classified and labeled, and meet manufacturers' plant nutrient claims. Until quite recently, state regulatory programs did not explicitly address the issue of controlling contaminants such as heavy metals in fertilizer products. In 1998 the State of Washington enacted legislation to create this country's first comprehensive system for regulating fertilizer contaminants. A key feature of Washington's program is a publicly accessible internet website containing data on all fertilizers registered in the State of Washington, including data on levels of non-nutrient metals in each registered product. This database can be accessed at *http//www.wa.gov/agr/pmd/fertilizers.*

The States of Texas and California have also recently established regulatory programs for fertilizer contaminants, and a number of other states are likewise considering regulatory initiatives in this area.

EPA supports state efforts to regulate contaminants in fertilizers. EPA regulates only a small fraction of the fertilizers currently on the market (one half of one percent or less) under its RCRA authorities. The potential certainly exists, however, for contaminant problems in other types of fertilizers. For example, cadmium levels in certain phosphate fertilizers (which typically are not waste derived) have been the subject of some concern recently by researchers, state regulators and others. We believe that the State of Washington's fertilizer regulatory program has been highly successful in controlling, and in a number of cases reducing, contaminants in fertilizer products sold in that state, and we thus encourage other states to develop similar programs.

VI. State authority

A. Applicability of Federal RCRA Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA hazardous waste program within the state. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent federal requirements and become federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law.

A state may receive authorization by following the approval process described in 40 CFR part 271. Part 271 of 40 CFR also describes the overall standards and requirements for authorization. After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements (this does not, however, preclude a state from adopting and implementing such new regulations under state law only, prior to being authorized for them). The state must adopt such requirements to maintain authorization. In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized States. Although authorized states are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so. Authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements.

RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program. *See* also 40 CFR 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, either HSWA or non-HSWA, that are considered less stringent.

B. Authorization of States for Today's Proposal

Today's rule is promulgated pursuant in part to HSWA authority and in part to non-HSWA authority. The conditional exclusion from the definition of solid waste for hazardous secondary materials used in zinc fertilizers is promulgated pursuant to non-HSWA authority, and is also less stringent than the current Federal requirements. Therefore, States will not be required to adopt and seek authorization for the conditional exclusion. EPA will implement the exclusion only in those States which are not authorized for the RCRA program. EPA believes, however, that this final rulemaking has considerable merit, and we thus strongly encourage States to amend their programs and become federally authorized to implement these rules.

The elimination of the exemption from LDR treatment standards for K061 derived fertilizers is promulgated pursuant to RCRA section 3004(g), a HSWA provision.[5] Therefore, the Agency is adding this rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. Table 2 in 40 CFR 271.1(j) is modified to indicate that these requirements are self-implementing. Until the States receive authorization for these more stringent HSWA provisions, EPA will implement them. Once authorized States adopt an equivalent rule and receive authorization for such rule from EPA, the authorized state rule will apply in that State as the RCRA Subtitle C requirement in lieu of the equivalent federal requirement.

VII. Administrative Assessments

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, the Agency has determined that today's proposed rule is a significant regulatory action because this proposed rule contains novel policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket to today's proposal.

EPA's economic analysis suggests that this rule is not economically significant under Executive Order 12866.

Detailed discussions of the methodology used for estimating the costs, economic impacts and the benefits attributable to today's rule for regulatory modifications to the definition of solid waste for zinc-containing hazardous waste-derived fertilizers, followed by a presentation of the cost, economic impact and benefit results, may be found in the background document: ''Economic Analysis for Regulatory Modifications to the Definition of Solid Waste For Zinc-Containing Hazardous Waste-Derived Fertilizers, Notice of Final Rulemaking,'' which is in the docket for today's final rule.

Methodology. To estimate the cost, economic impacts to potentially affected firms and benefits to society from this rulemaking, we analyzed data from zinc micronutrient producers, firm financial reports, trade associations and chemical production data. The Agency has used both model facilities and actual facilities in analyzing the effects of this proposed regulation.

To estimate the incremental cost or cost savings of this rule making, we reviewed baseline management practices and costs of potentially affected firms. The Agency has modeled the most likely post-regulatory scenario resulting from this action (*e.g.,* shifts to non-hazardous fertilizer feedstocks, shifting from zinc oxysulfate to zinc sulfate monohydrate production) and the estimated cost of complying with it.

[5] In Aug. 17, 1988, through a rule promulgated pursuant to HSWA, EPA imposed treatment standards prior to land application on all other commercial fertilizers containing recyclable waste, except for those derived from K061 (53 FR 31198, 31202). Today's rule simply extends the application of treatment standards to K061 derived fertilizers.

The difference between the baseline management cost and the post-regulatory cost is either the incremental cost or cost savings resulting from the rulemaking.

To estimate the economic impact of today's rule, we compared the incremental cost or cost savings of the rule with model firm sales. The Agency has also considered the ability of potentially affected firms to pass compliance costs on in the form of higher prices.

To characterize the benefits of today's rule, we evaluated available data and presented a qualitative assessment of benefits including ecological benefits and protection of natural resources such as groundwater.

Results. Volume. Data reviewed by the Agency indicates that there are 3 to 4 zinc micronutrient producers, one zinc producer, one steel mill, and 23 brass fume dust generators (ingot makers, mills, and foundries) potentially affected by today's rule. Although the exact amount of hazardous waste used in zinc micronutrient fertilizer production on annual basis varies from year to year, in 1997, data indicate that approximately 46,000 tons of hazardous waste were used in the production of zinc micronutrient fertilizer. The principal hazardous waste feedstocks were tire ash, electric arc furnace dust (K061) and brass fume dust from ingot makers, mills and foundries.

Costs. For the part of today's rule pertaining to zinc micronutrient fertilizers, we estimate the total annual cost savings from today's proposal to be $2.14 million for all facilities. Costs savings for different groups are summarized in Table 1.

TABLE 1.—ESTIMATED INCREMENTAL COSTS AND COST SAVINGS BY FACILITY CATEGORY

Potentially affected facility	Incremental annual costs (cost savings) (1999$)
Zinc Oxysulfate Producers.	($0.49 million).
Zinc Sulfate Monohydrate Producers.	($0.75 million).
Primary Zinc Producers.	($1.0 million).
Steel Mill	$1.5 million.
Brass Fume Dust Generators.	($1.4 million).
Total	($2.14 million).

Costs and cost savings to zinc oxysulfate producers are estimated from either shifting production to zinc sulfate monohydrate or shifting to nonhazardous sources of oxysulfate feedstocks. Zinc sulfate monohydrate producers and primary zinc producers are estimated to realize cost savings from shifting brass fume dust currently used in animal feed production to fertilizer production. Under current zinc sulfate markets, fertilizers are sold at a higher price than animal feed. One steel mill that has generated baghouse dust used in fertilizer manufacturing is expected to incur additional costs from having to shift their dust from fertilizer production to land disposal. And brass fume dust generators (mills, ingot makers, foundries) are estimated to incur cost savings from shifting their dust from zinc reclamation and animal feed to fertilizer production.

Economic Impact Results. To estimate potential economic impacts resulting from today's rule, we use a first order economic impacts measure: the estimated incremental costs or cost savings of today's rule as a percentage of affected firms sales. Because of data limitations, EPA was unable to obtain profit information for potentially affected firms. For two zinc oxysulfate producers the estimated impact of the rule is 1.42 percent in incremental costs for one firm and 0.64 percent in cost savings for the other. Two zinc sulfate monohydrate producers are estimated to realize cost savings of 0.1 and 15 percent of revenue. For the primary zinc producer, the rule is estimated to result in cost savings equal to 1 percent of firm sales. More detailed information on this estimate can be found in the economic analysis placed into today's docket.

Benefits Assessment. Because EPA did not use any risk assessments of current or projected metals and dioxin concentrations in zinc fertilizers in the development of this rulemaking, the Agency cannot make any quantitative conclusions about the risk reduction from today's final rule. To estimate the benefits resulting from today's rule, EPA looked at available literature and records regarding hazardous waste feedstocks used to make zinc micronutrient fertilizers. The data suggest that today's rule will reduce loading of toxic non-nutritive constituents to the soil. Two zinc oxysulfate samples produced from hazardous waste and analyzed by the State of Washington had dioxin concentrations between 17 and 42 times background level (''Final Report Screening Survey for Metals and Dioxins in Fertilizer Products and Soils in Washington State,'' Washington State Department of Ecology, April 1999, Figures 1–1 and 1–2). In addition, the zinc oxysulfate manufacturing process does not remove any of the lead or cadmium from the feedstock material. If promulgated, today's proposal would reduce annual loadings of these metals to the soil.

In addition, today's proposal may reduce natural resource damage and contamination to groundwater. EPA is aware of at least two damage incidents caused by land placement of hazardous waste prior to fertilizer production that resulted in contamination of either groundwater or surrounding surface water bodies adjacent to the site. (''Report of RCRA Compliance Inspection at American Microtrace Corporation,'' US EPA Region VII, December 4, 1996, Editorial, The Atlanta Journal/Constitution, April 11, 1993). Today's proposal may increase non-use values for these environmental amenities as well.

The Agency also believes that this rule has the potential for reducing what may be considered low probability but high consequence adverse human health or environmental impact if contamination from hazardous secondary material used in fertilizer production should, because of geological conditions such as karst terrain, reach a major population drinking water source or sensitive environmental location. This rule should lessen the chances of this type of event even though the probabilities of such occurrences and the magnitude of any impacts are not known.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has fewer than 1000 or 100 employees per firm depending upon the SIC code the firm primarily is classified; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, we have determined that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

There is one small entity incurring incremental costs and offsetting increased revenues resulting from this rulemaking. This firm is Frit Inc, a zinc oxysulfate fertilizer producer. Frit has one facility co-located onsite with Nucor Steel's Norfolk, Nebraska facility. Frit has been producing zinc oxysulfate fertilizer from Nucor's baghouse dust (K061, a listed hazardous waste). As result of this rulemaking, Frit will no longer be able to make zinc oxysulfate from Nucor's dust. This is due to both the removal of the exemption of K061 derived fertilizer's from LDR requirements and metal limits on zinc fertilizers made from hazardous secondary materials. EPA understands that Frit is ceasing operations at the Norfolk, Nebraska facility. In the economic analysis of the proposed rulemaking, EPA had modeled Frit switching from zinc oxysulfate to zinc sulfate monohydrate at Nucor's facility as the most cost-effective post-regulatory alternative. In public comment on the proposed rulemaking, The Fertilizer Institute, a trade association of which Frit is a member, commented that EPA's economic analysis had not accounted for costs of switching and operating from zinc oxysulfate to zinc sulfate monohydrate. Although EPA agrees with some of The Fertilizer Institute's comments and disagrees with others (for more information see the Response to Comments document to today's rulemaking), when EPA reevaluated two possible alternative regulatory responses for Frit to this rulemaking (1. switching from zinc oxysulfate to zinc sulfate monohydrate, and 2. switching from hazardous secondary sources to nonhazardous secondary sources), we determined that switching to nonhazardous sources of zinc-bearing secondary materials would be more cost-effective for Frit than switching its production to ZSM. This is because although it costs more to purchase nonhazardous zinc-bearing secondaries, the fertilizers produced from the nonhazardous sources are sold at a higher price due to lower nonnutritive mineral content (i.e. lead and cadmium). Because Frit is ceasing operations at the Nucor site, EPA has modeled the firm consolidating its operations at another company facility to produce zinc oxysulfate from nonhazardous sources. EPA has estimated that Frit's costs for nonhazardous feedstocks will increase by $2.9 million. Also, Frit should realize increased revenues of $3.4 million that offset these costs and increase profit by $0.49 million. Thus, Frit should not be significantly impacted by this rule even though it will be required to incur additional costs when substituting to nonhazardous sources.

Moreover, EPA does not believe that one regulated entity constitutes a substantial number of small entities in the zinc micronutrient industry. There are several other firms producing zinc micronutrient fertilizers, some of them small businesses. As discussed below, this rule will benefit many of these firms.

It is also likely that even in the absence of this rulemaking that opportunities to market K061 derived fertilizers would become more limited in response to decreased consumer demand for fertilizers with high non-nutritive mineral content. EPA notes that there is currently a market trend away from zinc fertilizers with high heavy metal content (*see www.chemexpo.com/news/newsframe.cfm?framebody=/news/profile.cfm* as obtained April 12, 2002 for zinc sulfate). Therefore, it is likely that even in the absence of this rulemaking, the market for zinc fertilizers with relatively high heavy metal content, such as K061-derived zinc oxysulfate, is declining in favor of cleaner zinc fertilizers. And in the past 3 years, there has been a trend away from using K061 in fertilizer production. Two of the three firms that had used K061 in 1997 in zinc oxysulfate production had ceased using this hazardous feedstock prior to EPA's proposed fertilizer rulemaking.

EPA also notes that this rulemaking will assist many small businesses that either generate hazardous zinc-bearing secondary feedstocks or use those feedstocks in fertilizer production by opening up markets for these materials including brass dust, tire ash, and zinc oxides from steel waste. Brass foundries, brass mills, and brass ingot makers are examples of the types of small business generators likely to benefit from today's final rule. The Agency has received favorable public comments from trade associations representing small business generators of hazardous zinc-bearing secondaries. Other small business producers of zinc sulfate monohydrate such as Big River Zinc, and Madison Industries will benefit from increased supplies of zinc-bearing secondaries. For more information, please refer to the background document entitled ''Economic Analysis for Regulatory Modifications to the Definition of Solid Waste For Zinc-Containing Hazardous Waste-Derived Fertilizers, Notice of Final Rulemaking,'' which was placed in the docket for today's final rule.

For the reasons discussed above, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1189.XX). A copy of this ICR may be obtained from Sandy Farmer, OPIA Regulatory Information Division, U.S. Environmental Protection Agency (2137), 1200 Pennsylvania Avenue, NW., Washington DC 20460, or by calling (202) 260–2740 and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460, by e-mail at *farmer.sandy@epamail.epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.*

EPA has finalized the following conditions for reporting and recordkeeping by generators and manufacturers: The rule requires generators to submit a one-time notice to the EPA Regional Administrator (or the state Director in an authorized state) and to maintain all records of all shipments of excluded hazardous secondary materials for a minimum of three years As a condition of the exclusion, manufacturers will be required to submit a one-time notice, retain for a minimum of three years

records of all shipments of excluded hazardous secondary materials that were received by the zinc fertilizer manufacturer during that period, and submit an annual report identifying the types, quantities and origins of all such excluded materials that were received by the manufacturer in the preceding year. The manufacturer will also be required to perform sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Additional testing will be required when changes to processes or feedstock materials are made that could significantly alter the composition of the fertilizer products. These conditions replace the current hazardous waste regulatory requirements for reporting and recordkeeping, and are designed to improve the accountability system, and government oversight capabilities, over the handling of secondary materials used to make zinc fertilizers.

EPA estimates that the total annual respondent burden for the new paperwork requirements in the rule is approximately 61 hours per year and the annual respondent cost for the new paperwork requirements in the rule is approximately $12,653. However, in addition to the new paperwork requirements in the rule, EPA also estimated the burden and cost savings that generators and manufacturers could expect as a result of no longer needing to comply with the existing RCRA hazardous waste information collection requirements for the excluded materials. This cost savings of $21,149 minus the $12,653 cost for the new paperwork requirements will result in an overall cost savings $8,496. The net cost to EPA of administering the rule was estimated at approximately $244 per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written analysis, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of § 205 do not apply when they are inconsistent with applicable law. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under § 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials to have meaningful and timely input in the development of regulatory proposals, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule does not include a Federal mandate that may result in expenditures of $100 million or more to State, local, or tribal governments in the aggregate, because this rule imposes no enforceable duty on any State, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. Therefore, today's proposed rule is not subject to the requirements of Sections 202, 203, and 205 of UMRA.

E. Federalism—Applicability of Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.,* the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132. This rule directly affects primarily zinc micronutrient producers and generators of hazardous wastes used in zinc fertilizer production. There are no State and local government bodies that incur direct compliance costs by this rulemaking. And State and local government implementation expenditures are expected to be less than $500,000 in any one year (for more information, please refer to the background document entitled ''Federalism Analysis (Executive Order 13132) for Zinc-Containing Hazardous Waste-Derived Fertilizers, Notice of Proposed Rulemaking: Substantial Direct Effects'', August 2000). Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

This rule preempts State and local law that is less stringent for these zinc-bearing hazardous wastes. Under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 to 6992k, the relationship between the States and the national government with respect to hazardous waste management is established for authorized State hazardous waste programs, 42 U.S.C. 6926 (section 3006), and retention of State authority, 42 U.S.C. 6929 (section 3009). Under section 3009 of RCRA, States and their political subdivisions may not impose requirements less stringent for hazardous waste management than the national government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

The Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this rule present a disproportionate risk to children. EPA's fertilizer risk assessment modeled a number of pathways by which farmers and their children could be exposed to metals and dioxins in fertilizer products applied at recommended rates and frequencies. Exposure was modeled through both direct and indirect pathways. The direct pathways considered were the inhalation pathway, including inhalation of windblown emissions, and from emissions during product application and tilling. Direct ingestion of soils amended with fertilizers was also modeled. The indirect exposure pathways considered were ingestion of plants (vegetables, fruits, and root vegetables) grown on soils amended with fertilizer products containing metals and dioxins, ingestion of beef and dairy products produced on land amended with these products, and ingestion of home-caught fish from a stream adjacent to the farmer's agricultural field.

EPA's fertilizer risk assessment used a probabilistic methodology to estimate incremental lifetime cancer and non-cancer risks to farmers and farm children. The general conclusion of the risk assessment was that fertilizers generally do not pose harm to human health or the environment. Since today's final rule is expected to reduce the overall levels of contaminants in zinc fertilizers made from hazardous secondary materials, the Agency expects that the impacts of this rule on childrens' health will be positive, albeit relatively small.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule establishes a conditional exclusion for zinc fertilizers based on contaminant levels for metals and dioxins. After considering alternatives, EPA has determined that it would be impractical and inappropriate to use voluntary consensus standards in this rulemaking, for the reasons discussed in more detail in in Section III.D of this preamble.

I. Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all populations in the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health or environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in safe and healthful environments. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's rule pertains to hazardous wastes used in zinc micronutrient production, and is intended to reduce risks of excluded hazardous secondary materials, and benefit all populations. As such, this rule is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities.

Excluded hazardous secondary materials will be subject to protective conditions regardless of where they are generated and regardless of where they may be managed. Although the Agency understands that the exclusion may affect where these wastes are managed in the future, the Agency's decision to conditionally exclude these materials is

independent of any decisions regarding the location of waste generators and the siting of waste management facilities. Today's rule will reduce loadings of toxic non-nutritive constituents to the soil, and will ensure proper management of secondary materials at affected facilities. EPA believes that these provisions of the rule will benefit all populations in the United States, including low-income and minority communities.

J. Executive Order 13211 (Energy Effects)

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule applies to a discrete sector of the economy and potentially adversely affects fewer than 20 firms. This rule reduces regulatory burden and creates markets for hazardous zinc-bearing secondary materials. It thus does not adversely affect energy supply, distribution or use.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on July 24, 2002, except for the amendment to 40 CFR 266.20(b), which eliminates the exemption from treatment standards for fertilizers made from recycled electric arc furnace dust. The effective date for that provision in today's final rule is January 24, 2003.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental proteciton, Hazardous waste, Reporting and recordkeeping requirements.

Dated: July 15, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

2. Section 261.4 is amended by adding paragraphs (a)(20) and (a)(21) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in § 261.1 (c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(A) Submit a one-time notice to the Regional Administrator or State Director in whose jurisdiction the exclusion is being claimed, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

(*1*) have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

(*2*) provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(*3*) prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of this paragraph (a)(20).

(D) Maintain at the generator's or intermediate handlers's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

(*1*) Name of the transporter and date of the shipment;

(*2*) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(*3*) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in paragraph (a)(20)(ii)(B) of this section.

(B) Submit a one-time notification to the Regional Administrator or State Director that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Regional Administrator or State Director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in § 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described inparagraph (a)(20)(ii)(A) of this section, and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of 40 CFR Parts 264 and 265.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under paragraph (a)(20) of this section, provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of paragraph (a)(21)(ii) of this section. Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this paragraph (a)(21).

PART 266—[AMENDED]

3. The authority citation for Part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

4. Section 266.20 is amended by removing the last two sentences of paragraph (b), and adding paragraph (d) to read as follows:

§ 266.20 Applicability.

* * * * *

(d) Fertilizers that contain recyclable materials are not subject to regulation provided that:

(1) They are zinc fertilizers excluded from the definition of solid waste according to § 261.4(a)(21) of this chapter; or

(2) They meet the applicable treatment standards in subpart D of Part 268 of this chapter for each hazardous waste that they contain.

PART 268— [AMENDED]

5. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart D—Treatment Standards

§ 268.40 [Amended]

6. Section 268.40 is amended by removing and reserving paragraph (i).

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

7. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

8. In § 271.1(j), tables 1 and 2 are amended by adding the following entries in chronological order by date of publication to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
July 15, 2002	Elimination of LDR Treatment Standards Exemption for K061-Derived Fertlizers.	July 24, 2002, FR cite	January 24, 2003.

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984—Continued

Promulgation date	Title of regulation	Federal Register reference	Effective date
* *	*	* *	* *

TABLE 2.—SELF IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* *	*	* *	* *
January 24, 2003	Elimination of LDR Treatment Standards Exemption for K061 Derived Fertilizers.	3004(g)(6)	July 24, 2002, FR cite.
* *	*	* *	* *

[FR Doc. 02–18405 Filed 7–23–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 18

[ET Docket No. 98–80; FCC 02–157]

Conducted Emission Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On July 10, 2002 (67 FR 45666), the Commission published final rules in the **Federal Register**, which amended the rules for Conducted Emission Limits. This document contains a correction to the effective date of that rule which was inadvertently published incorrectly.

DATE: Effective August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Anh Wride, Office of Engineering and Technology, (202) 418–0577, TTY (202) 418–2989, e-mail: *awride@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending parts 15 and 18 in the **Federal Register** of July 10, 2002, (67 FR 45666). This document corrects the **Federal Register** as it appeared. In FR Doc. 02–17264 published on July 10, 2002, (67 FR 45666), the Commission is correcting the ''**DATES**: Effective August 9, 2002 of the Commission's rules to reflect the correct **DATES**: Effective September 9, 2002.''

In rule FR Doc. 02–17264 published on July 10, 2002 (67 FR 45666) make the following correction:

On page 45666, in the third column correct Dates: Effective August 9, 2002 to read as **DATES**: Effective September 9, 2002.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–18626 Filed 7–23–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; DA 02–1490]

Request for Comment on Petition for Clarification on the Provision of and Cost Recovery for Captioned Telephone as an Improved Voice Carry-Over Service for Telecommunications Relay Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; request for comments on petition for clarification.

SUMMARY: This document seeks public comment on a petition requesting clarification of the Commission's rules on telecommunications relay services (''TRS'') with respect to the provision and reimbursement of captioned telephone, an enhanced voice carry-over service (published at 65 FR 38432, June 21, 2000.) *See* Petition for Clarification Provision of and Cost Recovery for CapTel, An Enhanced VCO Service, CC Docket No. 98–67 filed April 12, 2002 on the behalf of Ultratec, Inc. This document also seeks public comment on Ultratec, Inc.'s request for clarification that certain TRS mandatory minimum standards do not apply to this service.

DATES: Interested parties may file comments in this proceeding no later than July 26, 2002. Reply comments may be filed no later than August 12, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC, 20554.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–2247 (voice), (202) 418–7898 (TTY), or e-mail at *dljackso@fcc.gov.*

SUPPLEMENTARY INFORMATION: When filing comments, please reference CC Docket No. 98–67. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of the proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail

(although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325 Washington, DC 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Dana Jackson, Federal Communications Commission, 445 12th Street, SW, Room 6–C410, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b). Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or e-mail at *bmillin@fcc.gov.* This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro.*

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 02–18371 Filed 7–23–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 071902C]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 21, 2002, through 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of northern rockfish for the Central Regulatory Area was established as 4,170 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for northern rockfish in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,120 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 2002.

Virginia M. Fox,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18737 Filed 7–19–02; 3:35 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304-01; I.D. 071902A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 20, 2002, through 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of Pacific ocean perch for the Western Aleutian District was established as 5,236 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for Pacific ocean perch in the Western Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,436 mt, and is setting aside the remaining 800 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the 2002 TAC of Pacific ocean perch for the Western Aleutian District of the BSAI constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.20(b)(3)(iii)(A). These procedures are unnecessary and contrary to the public interest because the need to implement these measures in a timely fashion to avoid exceeding the 2002 TAC of Pacific ocean perch for the Western Aleutian District of the BSAI constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority:

Dated: July 19, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18735 Filed 7–19–02; 3:35 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 071902B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of pelagic shelf rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 21, 2002, through 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of pelagic shelf rockfish for the Central Regulatory Area was established as 3,480 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for pelagic shelf rockfish in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,450 mt, and is setting aside the remaining 30 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is

contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18736 Filed 7–19–02; 3:35 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 142
Wednesday, July 24, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE80

Small Business Size Standards; Information Technology Value Added Resellers

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to establish a new industry category and size standard of 500 employees for Information Technology Value Added Resellers under Other Computer Related Services, North American Industry Classification System (NAICS) 541519. This industry category and size standard is being established to better apply small business eligibility requirements under Federal contracts that combine substantial services with the acquisition of computer hardware and software. SBA is requesting public comments on establishing this industry category and size standard.

DATES: Comments must be received on or before August 23, 2002.

ADDRESSES: Send comments to Linda G. Williams, Associate Administrator for Policy, Planning, and Liaison, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third St., SW, Mail Code 6510, Washington, DC 20416; or, via e-mail to *SIZESTANDARDS@sba.gov.* Upon request, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Gary Jackson, Assistant Administrator for Size Standards, at (202) 205–6464.

SUPPLEMENTARY INFORMATION:

Information technology (IT) is one of the largest areas of Federal contracting today. The Federal government spent approximately $19 billion in contracting for computer hardware, software, programming, and other related services during fiscal year 2000. Within this area of contracting, many Federal agencies, as well as private sector organizations, look for contractors that provide solutions to their IT needs. In this regard, they seek a contractor, such as a Value Added Reseller or Solution Provider, who can provide a range of services that assist and support the acquisition of computer hardware and software. These contractors provide services such as advising an organization on what types of computer equipment, systems, and technologies will fit its needs; designing and integrating systems; purchasing and installing IT equipment; customizing hardware and software configurations; and providing technical services, maintenance, warranty service, and user support. The customer benefits from these types of contracts by having a single contractor coordinate their IT acquisition needs. These value added services are vitally important in a rapidly changing environment where new products and technologies are continually being introduced.

SBA's size standards and program eligibility requirements do not specifically address the classification of Federal contracts that combine services with the acquisition of supplies. As a result, Federal agencies have had difficulty using small business preference programs for these types of contracts, especially for IT. Under SBA's current policies, such contracts are almost always viewed as a manufacturing or supply contract since the dollar value of the largest component of the contract will be associated with the acquisition of supplies. For supply contracts that are set aside for small business or for SBA's 8(a) and HUBZone programs, an eligible small business must be a small manufacturer of the end item being procured or, if not the actual manufacturer of the end item, must supply the product of a small business manufacturer (referred to as the ''nonmanufacturer rule'') unless SBA grants a waiver of the nonmanufacturer rule for that specific item (13 CFR 121.406). For most supply contracts, this distinction is workable: either a company has made the product or is supplying it along with distribution related value added services. SBA, however, has found that the manufacturer/nonmanufacturer distinction does not adequately address Federal IT contracting that combine supplies and services into a single contract.

The acquisition of IT equipment has several aspects that lead SBA to believe that it should establish special small business eligibility requirements for IT Value Added Resellers that are similar to those for a service contractor. First, as discussed above, many Federal agencies prefer to go to a single source to obtain IT equipment and supporting services. In doing so, a contractor often provides advisory and other support services. Second, most acquisitions are for numerous IT products that make it unrealistic to expect one manufacturer to produce all of the required items. In many cases, the agency and contractor agree in advance to equipment prices and delivery timeframes. Third, IT contracts often require the contractor to customize computer hardware or install specialized software to meet an individual user's needs. Although these activities usually do not constitute manufacturing, they are beyond the traditional wholesale-distribution function.

To address these types of IT contracts, SBA proposes establishing a category of IT Value Added Resellers under NAICS code 541519, Other Computer Related Services. An IT Value Added Resellers industry category will allow Federal IT contracts that combine supply and services activities to be classified in an industry that reflects the purpose and scope of the contract and for SBA to apply a reasonable size standard and other eligibility requirements to IT Value Added Resellers that generally perform these combined functions. This new industry category will enable Federal agencies to better utilize small business preference programs for their IT acquisitions.

SBA recognizes that establishing a category of IT Value Added Resellers as a service activity is a departure from the North American Industry Classification System (NAICS). Under NAICS, Value Added Resellers are classified in the Wholesale Trade sector along with merchant wholesalers, distributors, drop shippers, brokers, and agents. These latter types of establishments arrange the delivery of manufactured products to their customers and provide value added services associated with distribution, such as billing or inventory management. While providing

manufactured products, IT Value Added Resellers also offer services beyond those associated with the distribution function. SBA believes that for Federal small business procurement preference programs in particular, IT Value Added Resellers need to be treated in a different manner than wholesale trade firms (or nonmanufacturers) on supply contracts. Specifically, the service activities performed by IT Value Added Resellers warrants greater consideration than NAICS affords other Value Added Resellers.

Definition of Information Technology Value Added Resellers

An IT Value Added Reseller provides a total solution to IT acquisitions by providing multi-vendor hardware and software along with significant pre-sale and post-sale services. Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support.

This proposed rule requires that a Federal IT procurement be classified under this industry category if it consists of at least 15 percent but not more than 50 percent of value added services as measured by the total price less the cost of IT hardware, computer software, and profit. This requirement ensures that the contractor provides a meaningful amount of substantive computer-related services. For example, if a procurement consists of $750,000 for personal computers, printers, and application software; $250,000 for installation of hardware, maintenance, and technical support; and $50,000 profit, then it satisfies the criteria to be classified as an IT Value Added Resellers procurement. In this example, 23.8 percent of the value of the procurement is for value added computer services. (Percent of value added services = value of computer services / total price. 23.8% = $250,000 / $1,050,000.)

However, an IT procurement consisting of value added services less than 15 percent or greater than 50 percent must be classified under a different NAICS industry. If a Federal procurement is comprised of less than 15 percent of value added services, then it must be classified under a manufacturing industry and incorporate the applicable manufacturer size standard and nonmanufacturer size standard. For example, on a procurement to provide 100 personal computers without any additional services or with only incidental services is classified under NAICS 334111, Electronic Computer Manufacturing. For this type of procurement reserved for small businesses or under the 8(a) and HUBZone Programs, the nonmanufacturer rule requires that a small business nonmanufacturer supply personal computers manufactured by a small manufacturer. In limited cases, SBA may waive this nonmanufacturer rule for a specific procurement or class of products allowing the nonmanufacturer to supply the product of any domestic manufacturer. (*See* 13 CFR 121.406.)

Conversely, if the IT procurement consists of more than 50 percent of value added computer-related services, it must be classified under the computer services industry that best describes the predominate service of the procurement. For example, a procurement to write a custom computer program that includes providing several personal computers and printers accounting for 25 percent of the value of the procurement is classified under NAICS 541511, Custom Computer Programming Services, since 75 percent of the work is for computer programming services. The size standard applicable to this procurement is $21 million in average annual receipts.

Size Standard and Eligibility Requirement for IT Value Added Resellers

SBA proposes to adopt the nonmanufacturer size standard of 500-employees, but is also seeking comments on alternatives to this size standard. A large proportion of the value of a contract will be for hardware and software with 20 percent to 30 percent generally for value added services. In addition, IT Value Added Resellers have obtained Federal supply contracts as nonmanufacturers under a 500-employee size standard. Applying that size standard to IT Value Added Resellers would maintain the same size standard under which many of these businesses currently qualify as small. In recognition that a substantial amount of the dollar value of the contract will be for hardware and software sales, an employee size standard is considered an appropriate size standard to measure the magnitude of operations of IT Value Added Resellers. To ensure consistent size eligibility requirements for other SBA programs outside of Federal procurement, the 500-employee size standard would be applicable to businesses whose primary activities match the IT Value Added Resellers description.

SBA considered three other size standards for IT Valued Added Resellers. These alternative size standards relate to existing size standards for computer services and wholesale trade.

First, SBA considered proposing the same $21 million size standard that applies to the computer services industries (NAICS codes 541510 -541519). If IT Value Added Resellers are viewed as part of computer services, then the same size standard may be appropriate. As mentioned above, SBA believes an employee size standard is a better measure of the operations of an IT Value Added Reseller and decided not to propose this or another receipts size standard.

Second, SBA considered a 150-employee size standard that represents the employee-equivalent of the $21 million computer services size standard. On average, computer services businesses generate $142,500 sales per employee. Sales in the amount of $21 million translate to approximately 150-employees ($21,000,000 ÷ $142,500 = 147.4). This 150-employee size standard results in a size standard consistent with that of the computer services receipts size standard without being skewed by the value of hardware and software products provided by an IT Value Added Reseller. SBA did not propose this size standard since it is lower than the size standard that now applies to nonmanufacturers. Without specific industry data by which to assess the impact of a 150-employee size standard on small businesses, SBA is reluctant to adopt that size standard without first seeking comments.

Third, SBA also considered applying the 100-employee size standard for wholesale trade industries to IT Value Added Resellers. SBA adopted a 500-employee size standard for nonmanufacturers in part because of the competition among both distributors and manufacturers on Federal supply contracts. Federal customers seeking IT value added services will almost always find computer services firms and distributors with services capabilities competing for those contracts. With a limited presence of manufacturer competitors, the need for a 500-employee size standard for IT Value Added Services may not exist. For the same reasons as not proposing a 150 employee size standard, SBA has decided to seek comment on this alternative before considering it for adoption.

SBA invites comments on these three alternative size standards, or other alternatives that may more appropriately define a small IT Value Added Reseller. The comments should explain why the alternative is a more

appropriate size standard than 500 employees. These comments should also discuss the impact of the 500 employee size standard and alternative size standard on small businesses and how they effectively assists small businesses. In addition, commenters are requested to identify data sources on IT Value Added Resellers that SBA may be able to use to more definitely evaluate the size standard.

The classification of Federal contracts under the proposed IT Value Added Resellers industry would alter how two other SBA regulations are applied when such contracts are set aside for small businesses or under the 8(a) and HUBZone Programs. First, an IT Value Added Reseller would be required to meet performance requirements (or limitations on subcontracting) as required on other service contracts. Under 13 CFR 125.6, a service contractor is required to perform at least 50 percent of the cost of the contract incurred for personnel with its own employees. Second, IT Value Added Resellers would not be subject to the nonmanufacturer rule (13 CFR 121.406). As discussed above, SBA views an IT Value Added Resellers contract as a service rather than a supply contract since its purpose is to assist and provide supporting services to an agency in the acquisition of information technology equipment.

SBA seeks the public's comment on this proposed rule. In addition to comments on alternative size standards, SBA specifically desires comments on the following issues:

(1) To what extent do Federal agencies expect contractors providing information technology equipment to also provide value added services?

(2) Are the activities included in the definition of IT Value Added Reseller appropriate?

(3) Should SBA require a different minimum and maximum percentage of total contract value for services? If so, state what percentages and describe the basis for those percentages?

(4) Should SBA calculate the percent of services on IT Value Added Reseller contracts based on total price or some other baseline?

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that the proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the reasons for establishing an industry category and size standard for IT Value Added Resellers.

ii. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation preference or adjustment.

Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses. The benefits of a new industry category and size standard would accrue to three groups. First, businesses that benefit by gaining small business status from the proposed size standards and use small business assistance programs. Second, growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the proposed size standards. Third, Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA's financial programs, in particular its 7(a) Guaranteed Loan Program. IT Value Added Resellers qualify for these loans if they have 100 or fewer employees. Since over the last two years only one loan was guaranteed to a firm with more than 50 employees, it is unlikely that this rule would expand the use of the 7(a) Program.

Newly defined small businesses would also benefit from SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

In the absence of specific data on IT Value Added Resellers, there is no definitive estimate of the number of additional businesses that would become qualified as small businesses for Federal small business procurement preference programs. The benefits of the rule in Federal contracting will be more in terms of clarifying requirements on Federal contracts combining IT supplies and services than increasing the actual number of new small businesses. This rule is likely to increase opportunities for small businesses, but it is uncertain how many Federal contracts may be affected.

Federal agencies may benefit from the new industry category and size standard if more small businesses compete for set-aside procurements. The larger base of small businesses would likely increase competition and lower the prices on set-aside procurements. A large base of active small businesses may create an incentive for Federal agencies to set aside more procurements, thus creating greater opportunities for all small businesses. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

This rule is not expected to increase administrative costs to the Federal government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. If the number of businesses seeking SBA assistance increases, there will be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal government may be higher on some Federal contracts as a result of this rule. With a more appropriate contract requirement for IT value added service, Federal

agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set aside is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a), and HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and loses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone or small disadvantaged businesses instead of large businesses since those two categories of small businesses are eligible for price evaluation preferences for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The potential distributional impacts of these transfers cannot be estimated with any degree of precision since the data on the size of businesses receiving a Federal contract are limited to identifying small or other-than-small businesses.

The creation of an IT Value Added Resellers industry category and size standard is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the reasons and objectives of the rule; SBA's description and estimate of the number of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate overlap or conflict with the proposed rule; and alternatives considered by SBA.

(1) What Is Reason for This Action?

As discussed in the supplemental information, the purpose of this proposal is to establish more reasonable size standard and eligibility requirements for Federal information technology contracts that combine the acquisition of computer equipment and services. The proposed changes will better assist small IT Value Added Resellers in obtaining Federal contracts.

(2) What Is the Objective and Legal Basis for the Rule?

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA the authority to establish and change size standards. Size standards are developed on an industry basis and vary by industry to reflect differing characteristics of firms in an industry or other appropriate factors regarding an industry. This rule proposes to establish an industry category of IT Value Added Resellers that SBA believes is necessary to appropriately apply its small business assistance program to small businesses in this category.

(3) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

SBA estimates that approximately 1,100 small businesses could receive assistance as a result of this proposed rule. In SBA's PRO-Net data base, 1,100 small businesses indicated that they are wholesalers of IT equipment and are capable of providing some other services. It cannot be determined how many could actually meet the requirements of the proposed IT Value Added Resellers definition. Thus, the actual number of affected businesses is likely to be smaller. A few small computer manufacturers could be adversely affected by this rule since small business set-aside, 8(a), or HUBZone contracts classified under the IT Value Added Resellers industry would not apply the nonmanufacturer rule. However, SBA believes the impact would be minimal since the IT Value Added Reseller contracts are most likely not currently being awarded to small manufacturers under these programs.

Description of Potential Benefits of the Rule: The most significant benefit to businesses obtaining small business status as a result of this rule is their eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and small businesses located in Historically Underutilized Business Zones (HUBZones).

SBA estimates that approximately $118 million of additional Federal contracts could be awarded to small firms under the proposed IT Value Added Resellers size standard. In FY 2000, $2 billion were awarded for ADPE systems configuration supply contracts. Only 3.3 percent of computer supply contracts were awarded as small business set aside and 8(a) contracts. SBA assumes that Federal agencies will be able to increase their small business set-aside and 8(a) awards for ADPE systems configuration to the same level as for computer services contracts. In FY 2000, 9.2 percent of the computer services contracts were awarded as a small business set-aside or 8(a) contract. If SBA's assumption is correct, an additional 5.9 percent, or $118 million, in small business contract awards for ADPE systems configuration could result. Most of these contracts would consist of a potential transfer from large businesses to small IT Value Added Resellers. This does not represent the creation of new contracting activity by the Federal government, merely a possible reallocation or transfer to different sized firms.

SBA does not believe any additional loans would be made under its 7(a) Guaranteed Loan Program and Certified Development Company (504) Program as a result of changes the SBA is proposing in this rulemaking. IT Value Added Resellers are currently eligible for these programs if they have 100 or fewer employees. In the last two years, only one 7(a) loan was made to a small business with more than 50 employees.

In the 504 Program, the alternative size standards of $2 million net income and $6 million net worth most likely already qualify IT Value Added Resellers with 100 to 500 employees.

Description of Potential Costs of the Rule: The changes in size standards as they affect Federal procurement are not expected to add any significant costs to the Federal Government. As a matter of policy, procurements may be set aside for small businesses or under the 8(a) and HUBZone Programs only if awards are expected to be made at reasonable prices. Similarly, the rule should not result in any added costs associated with the 7(a) and 504 loan programs. The amount of lending authority SBA can make or guarantee is established by appropriation.

The competitive effects of size standard revisions differ from those normally associated with other regulations which typically burden smaller firms to a greater degree than larger firms in areas such as prices, costs, profits, growth, innovation and mergers. A change to a size standard is not anticipated to have any appreciable effect on any of these factors, although small businesses, 8(a) firms, or small disadvantaged businesses much smaller than the size standard for their industry may be less successful in competing for some Federal procurement opportunities due to the presence of larger, newly defined small businesses. On the other hand, with more larger small businesses competing for small business set-aside and 8(a) procurements, Federal agencies are likely to increase the overall number of contracting opportunities available under these programs, and this could result in greater opportunities for businesses much smaller than the size standard.

(4) Will This Rule Impose Any Additional Reporting or Record Keeping Requirements on Small Businesses?

This proposed rule does not impose any new information collection requirements which require OMB approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(5) What Are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule?

This proposed rule overlaps rules of other Federal agencies that use

SBA's size standards to define a small business. Under § 3(a)(2)(c) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

(6) What Alternatives Did SBA Consider?

SBA considered revising its definition of a manufacturer. On April 1, 1999, SBA published in the **Federal Register** a ''Request for Comments'' asking for comments on a modern definition of the term manufacturer and a new definition for ''Remanufacturer'' (64 FR 15708, dated April 1, 1999). SBA received only six comments on this issue, none of which provided sufficient information to support a revision to SBA's current manufacturer definition. After further review, SBA now believes that establishing an IT Value Added Resellers industry category is a more effective approach to addressing the size eligibility requirements of nonmanufacturers providing substantial services along with IT products on Federal contracts.

For purposes of Executive Order 12988, SBA has determined that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of government. Therefore, under Executive Order 13132, SBA determines that this proposed rule does not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

This proposed rule does not impose any new information collection requirements from SBA which require the approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business. Loan programs—business, Small businesses.

Accordingly, for the reasons stated in the preamble, part 121 of 13 CFR is proposed to be amended as follows:

PART 121—[AMENDED]

Subpart A—Size Eligibility Provisions and Standards

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

§ 121.201 [Amended]

2. In § 121.201, in the table ''Small Business Size Standards by NAICS Industry,'' under the heading Subsector 541–Professional, Scientific, and Technical Services, revise the entry for 541519 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS industry descriptions	Size standards in number of employees or millions of dollars
*	* * * * * *	
	Subsector 54—Professional, Scientific and Technical Services	
*	* * * * * *	
541519	Other Computer Related Services	$18.0
EXCEPT	Information Technology Value Added Resellers	[16] 500
*	* * * * * *	

3. In § 121.201, add footnote 16 at the end of the footnote section, under the table to read as follows:

Footnotes

* * * * *

16. NAICS code 541519—An Information Technology Value Added Reseller provides a total solution to information technology acquisitions by providing multi-vendor hardware and software along with significant services. Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support. For purposes of Government procurement, an information technology procurement classified under this industry category must consist of at least 15 percent and not more than 50 percent of value added services as measured by the total price less the cost of information technology hardware, computer software, and profit. If less than 15 percent of value added services, then it must be classified under a NAICS manufacturing industry. If the contract consists of more than 50 percent of value added services, it must be classified under the NAICS industry that best describes the predominate service of the procurement. For SBA assistance as a small business concern as an Information Technology Value Added Reseller, other than for Government procurement, a concern must be primarily engaged in providing information technology equipment and computer software and provides value added services which account for at least 15 percent of its receipts but not more than 50 percent of its receipts.

Dated: May 7, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–18766 Filed 7–23–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Planned Modification of the Houston Class B Airspace Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This document announces three fact-finding informal airspace meetings to solicit information from airspace users, and others, concerning a plan to modify the Class B airspace area at the George Bush Intercontinental Airport/Houston, TX. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the plan to modify the Houston, TX, Class B airspace area. All comments received during these meetings will be considered prior to any revision or issuance of a notice of proposed rulemaking.

DATES: *Meetings.* These informal airspace meetings will be held on Tuesday, August 27, 2002, at 6:00 pm—9:00 pm; Thursday, August 29, 2002, at 6:00 pm—9:00 pm; and Wednesday, September 4, 2002, at 6:00 pm—9:00 p.m.

Comments. Comments must be received on or before October 4, 2002.

ADDRESSES: *Meetings.* On August 27, 2002, the meeting will be held at Fletcher Aviation, at the William P. Hobby Airport, 9000 Randolph, Houston, TX. The August 29, 2002, meeting will be held at the Terminal Building at the West Houston Airport, 18000 Groschke, Houston, TX. The September 4, 2002, meeting will be held in the Academic room 126 at the North Harris College, 2700 W. Thorne Drive, Houston, TX.

Comments. Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Federal Aviation Administration, Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298.

FOR FURTHER INFORMATION CONTACT: Caroline Carey, Houston ATCT, George Bush Intercontinental Airport/Houston, 2700 West Terminal Rd., Houston, TX 77032; telephone (281) 209–8603.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) These meetings will be informal in nature and will be conducted by one or more representatives of the FAA Southwest Region. A representative from the FAA will present a formal briefing on the planned Class B airspace area modification. Each participant will be given an opportunity to deliver comments or make a presentation at the meetings. Only comments concerning the proposal to modify the Class B airspace area will be accepted.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter.

(d) These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(e) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(f) These meetings will not be formally recorded.

Agenda for the Meetings

—Opening Remarks and Presentation of Meeting Procedures.
—Briefing on Background for the Planned Modification of the Class B Airspace Area at the George Bush Intercontinental Airport/Houston, TX.
—Public Presentations and Discussions.
—Closing Comments.

Issued in Washington, DC, on July 15, 2002.

Ellen Crum,

Acting Manager, Airspace and Rules Division.

[FR Doc. 02–18619 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 111

Metal Strapping Materials on Pallets

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes revisions to the *Domestic Mail Manual* that would exclude the use of metal strapping or metal banding material to secure pallets of mail, whether an individual pallet of mail, a pallet composed of several individual pallets stacked to form a single unit, or a pallet with a pallet box containing mail. These proposed revisions would also exclude metal buckles, seals, or other devices used to secure the ends of nonmetal strapping material used on pallets of mail. These proposed revisions would not change current approved methods or other materials for securing the mail to pallets.

Many mailers and the Postal Service are concerned about safety with the continued use of metal materials, as well as environmental issues, such as recycling. During the past 10 years, most pallet mailers and mailing operations have eliminated metal materials in favor of less expensive materials. For example, polyester, the most rigid of all strapping materials, has very good breaking strength, has only a 1–2 percent elongation, retains tension well, and has excellent recyclability properties. Although steel is the strongest of strapping materials, it is expensive, can be dangerous to work with, and difficult to recycle.

DATES: Submit comments on or before August 23, 2002.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, U.S. Postal Service Headquarters, 1735 N Lynn Street, Suite 3025, Arlington, VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC. Comments may also be submitted via fax to 703–292–4058, ATTN: O.B. Akinwole.

FOR FURTHER INFORMATION CONTACT: O.B. Akinwole at (703) 292–3643.

SUPPLEMENTARY INFORMATION: Current Postal Service standards for mail palletization in *Domestic Mail Manual* (DMM) M041, whether for individual pallets, stacked pallets, or pallet boxes, affords mailers flexibility in choices to secure mail to a pallet. For an individual pallet, mailers may choose to use only straps or bands, only plastic stretchwrap or shrinkwrap, or a combination of straps or bands and plastic wrapping material. These various materials and methods may be used for individual pallets as long as the materials and methods are strong enough to secure the mail and maintain the integrity of the pallet load during transport and handling. For several pallets stacked to form a single unit, mailers must secure the pallets with at least two straps or bands. Stretchwrap and similar plastic covering materials are not permitted for securing these pallets into a single unit. For a pallet box, mailers are required to secure the pallet only if the pallet and the pallet box containing the mail are to be transported by the Postal Service, or the weight of the mail in the box is not sufficient to hold the box in place on the pallet during transport and processing.

Metal straps, bands, buckles, or seals used to secure the ends of other nonmetal strapping material, can create serious safety hazards to personnel and equipment preparing, processing, and distributing the mail. In addition, the accumulation and disposal of metal strapping materials can create additional hazardous situations and environmental concerns. It should be noted that current Postal Service standards for packaging mail prohibit the use of metal or wire for securing mail into packages, and the standards for traying mail specify the use of plastic straps for securing tray sleeves and lids.

The Postal Service is committed to integrating safety into all postal operations, not only for its employees but also for its customers. Serious injuries, such as deep cuts, can occur when metal bands are applied, often when removed. In addition, the Postal Service is committed to conservation initiatives and supports environmentally sound practices. In keeping with these two commitments, the Postal Service believes that eliminating the use of metal straps or bands on palletized mail would improve employee and customer safety and promote better resource conservation.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S. C. of 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment of the following proposed revisions to the *Domestic Mail Manual,* incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S. C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M040 Pallets

M041 General Standards

* * * * *

1.0 PHYSICAL CHARACTERISTICS

* * * * *

1.3 Securing Pallets

[*Revise 1.3 to read as follows:*]

Except for stacked pallets under 3.1 and pallet boxes under 4.3, each loaded pallet of mail must be prepared to maintain the integrity of the mail and the entire pallet load during transport and handling using one of the following methods:

a. Securing with at least two straps or bands of appropriate material. Wire or metal bands, straps, buckles, seals, and similar metal fastening devices may not be used.

b. Wrapping with stretchable or shrinkable plastic.

c. Securing with at least two straps or bands of appropriate material and wrapping with stretchable or shrinkable plastic. Wire or metal bands, straps,

buckles, seals, and similar metal fastening devices may not be used.

* * * * *

3.0 STACKING PALLETS

[*Revise the heading of 3.1 to read as follows:*]

3.1 Physical Characteristics

Pallets may be stacked two, three, or four tiers high if:

[*Revise item d to read as follows:*]

* * * * *

d. The stack of pallets is secured with at least two straps or bands of appropriate material to maintain the integrity of the stacked pallets during transport and handling. Wire or metal bands, straps, buckles, seals, and similar metal fastening devices may not be used. The stack of pallets may not be secured together with stretchable or shrinkable plastic.

* * * * *

4.0 PALLET BOXES

* * * * *

4.3 Securing

[*Revise the introductory text in 4.3 to read as follows:*]

Pallet boxes must be secured to the pallet with strapping, banding, stretchable, plastic, shrinkwrap, or other material (Wire or metal bands, straps, buckles, seals, and similar metal fastening devices may not be used.) that ensures that the pallet can be safely unloaded from vehicles, transported, and processed as a single unit to the point where the contents are distributed with the load intact if:

* * * * *

An appropriate amendment to 39 CFR 111 to reflect the changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–18732 Filed 7–23–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket OR–01–006b; FRL–7241–1]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Oregon; Medford Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve revisions to Oregon's State Implementation Plan (SIP) which were submitted on May 31, 2001. These revisions consist of: the 1993 carbon monoxide (CO) base/attainment year emissions inventory for Medford, Oregon and the revised Medford CO maintenance plan. EPA also proposes to approve Oregon's request for redesignation of Medford from nonattainment to attainment for CO.

DATES: Written comments must be received by August 23, 2002.

ADDRESSES: Written comments should be addressed to Connie Robinson, EPA, Region 10, Office of Air Quality (OAQ–107), at the address listed below.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, EPA, Region 10, Office of Air Quality (OAQ–107), Seattle, Washington, (206) 553–1086.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: June 25, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 02–18585 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[CA080–OPPS; FRL–7250–6]

Proposed Partial Withdrawal of Approval of 34 Clean Air Act Title V Operating Permits Programs and Implementation of a Partial Part 71 Federal Operating Permits Program in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to our authority at 40 CFR 70.10(b)(2)(i), EPA is proposing to withdraw, in part, approval of the following 34 Clean Air Act title V Operating Permits Programs in the State of California: Amador County Air Pollution Control District (APCD), Bay Area Air Quality Management District (AQMD), Butte County AQMD, Calaveras County APCD, Colusa County APCD, El Dorado County APCD, Feather River AQMD, Glenn County APCD, Great Basin Unified APCD, Imperial County APCD, Kern County APCD, Lake County AQMD, Lassen County APCD, Mariposa County APCD, Mendocino County APCD, Modoc County APCD, Mojave Desert AQMD, Monterey Bay Unified APCD, North Coast Unified AQMD, Northern Sierra AQMD, Northern Sonoma County APCD, Placer County APCD, Sacramento Metro AQMD, San Diego County APCD, San Joaquin Valley Unified APCD, San Luis Obispo County APCD, Santa Barbara County APCD, Shasta County APCD, Siskiyou County APCD, South Coast AQMD, Tehama County APCD, Tuolumne County APCD, Ventura County APCD, and Yolo-Solano AQMD. Our proposed partial title V program

withdrawal is based upon EPA's finding that the State's agricultural permitting exemption at Health and Safety Code 42310(e) unduly restricts the 34 local districts' ability to adequately administer and enforce their title V programs, which have previously been granted full approval status. Therefore, EPA is proposing to withdraw approval of those portions of the 34 district title V programs that relate to sources that would be subject to title V but for the state agricultural exemption (''state-exempt major stationary agricultural sources''). EPA is also today proposing to implement a partial federal operating permits program under 40 CFR part 71 (''Part 71 program'') for state-exempt major stationary agricultural sources.

DATES: Comments on this proposed action must be received in writing by September 3, 2002.

ADDRESSES: Written comments on this proposed action should be addressed to Gerardo Rios, Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region IX, at (415) 972–3974 or *rios.gerardo@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' or ''our'' means EPA.

Table of Contents

I. Background

Title V of the CAA Amendments of 1990 required all state permitting authorities to develop operating permits programs that met certain federal criteria codified at 40 Code of Federal Regulations (CFR) part 70. Where a state operating permits program substantially, but not fully, meets the 40 CFR part 70 criteria, section 502(g) of the Act authorizes EPA to grant interim approval to the state program, and requires EPA to identify the changes that must be made before the program can receive full approval.

In California, we granted interim approval to all 34 local operating permits programs initially submitted by the State. Our interim approvals, granted in 1994 and 1995, identified, among other things, the removal of the agricultural permitting exemption in California's Health and Safety Code (HSC) section 42310(e), as a change that had to occur before we could grant full approval. This section of California's HSC exempts from the requirement to obtain a permit ''any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals.'' We stated in each of our interim approval rulemakings that the State's permitting exemption was a program deficiency and that the exemption needed to be eliminated in order for us to grant full approval to the 34 operating permits programs.

On November 30, 2001, we promulgated final full approval of the 34 districts' title V operating permits programs, despite the State of California's failure to eliminate the agricultural permitting exemption. *See* 66 FR 63503 (December 7, 2001).[1] In granting full approval, we decided to defer title V permitting of state-exempted agricultural operations for a brief period, not to exceed three years.[2]

Subsequent to EPA's final rulemaking approving the 34 title V programs, EPA made a formal determination that all 34 local permitting authorities in California that have fully approved title V operating permit programs are not adequately administering or enforcing their programs because state law at Health and Safety Code 42310(e) exempts from permitting, ''equipment used in agricultural operations in the growing of crops or the raising of fowl or animals.'' In other words, this exemption hinders the ability of the local districts to issue, administer or enforce title V permits for any major sources covered by the exemption.[3] Title V of the Act does not allow any exemptions for major sources, and requires that all permitting authorities have the authority to ''issue permits and assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter.'' CAA 502(b)(5)(A). These requirements are echoed in the operating permit program approval regulations promulgated at 40 CFR part 70. *See* 40 CFR 70.4(b)(3)(i).

40 CFR 70.10(b) and 70.10(c) provide that EPA may withdraw a 40 CFR part 70 program approval, in whole or in part, whenever the permitting authority's legal authority does not meet the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the notice be published in the **Federal Register**.

40 CFR 70.10(b) also provides that EPA may promulgate and administer a federal program under title V of the Act in the event that a permitting authority is not adequately administering or enforcing a part 70 program, or portion thereof. This action must also be preceded by notification to the permitting authority of EPA's finding of inadequate program administration, and is contingent upon a failure of the permitting authority to take significant action within 90 days of such notification.

Our determination regarding the inadequacy of the 34 districts' title V programs was published in a Notice of Deficiency (NOD). *See* 67 FR 35990 (May 22, 2002). Publication of the NOD fulfilled our obligation under 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a title V permitting authority is not adequately administering or enforcing its title V operating permits program. Pursuant to 40 CFR 70.10(b)(2), publication of the NOD commenced a 90-day period during which the State of California must take significant action to assure adequate administration and enforcement of the local districts' programs.[4]

II. Description of Proposed Action

We are proposing to withdraw, in part, approval of the 34 fully approved Clean Air Act title V Operating Permits Programs in the State of California. We are proposing to withdraw only the portions of the programs that relate to state-exempt major stationary agricultural sources; because they have the ability to adequately administer and enforce their part 70 programs for non-

[1] Although there are 35 separate permitting authorities in California, one permitting authority, Antelope Valley APCD, was not included in our final action because it only recently obtained its authority to issue part 70 permits and is still under tis initial interim approval status granted on December 19, 2000 (65 FR 79314).

[2] Our final rulemaking was challenged by several environmental and communiy groups alleging that the full approval was illegal based, in part, on the exemption of major agricultural sources from title V permitting. EPA entered into a settlement of this litigation which requires, in part, that the Agency propose the actions contained in today's notice.

[3] We are not identifying every source covered by the California HSC exemption as a ''major source'' under title V. Rather, we are acknowledging that any stationary agricultural sources that are ''major sources'' are covered by title V, even if they are exempt from permitting under the California HSC.

[4] EPA has determined that ''significant action'' in this instance means the revision or removal of Health and Safety Code 42310(e) so that local air pollution control districts have the required authority to issue title V permits to stationary agricultural sources that are major sources of air pollution.

exempt major stationary sources, each of the 34 local air districts will continue to administer their existing title V program for all other title V sources. In addition, we are proposing to implement a partial federal operating permits program under 40 CFR part 71 for state-exempt major stationary agricultural sources. EPA's action is necessary because the local districts cannot issue, administer or enforce operating permits for these sources, which are required to obtain permits under title V of the Act.

Although the 90-day period for the State to take significant action in response to EPA's Notice of Deficiency does not expire until August 19, 2002, we are today proposing to partially withdraw title V program approval and to implement a partial part 71 program for state-exempt major stationary sources in each of the 34 California districts where we are proposing partial program withdrawal. We are proposing these actions now in anticipation that the State of California will not effect the necessary change in state law prior to the end of the 90-day period on August 19. However, consistent with 40 CFR 70.10(b)(2), final action on this proposal will occur only after the 90 days for the State to take significant action has fully elapsed.

III. Effect of EPA's Rulemaking

Our proposal, if finalized, would result in EPA administering and enforcing a part 71 federal operating permit program for state-exempt major stationary agricultural sources within the jurisdiction of the 34 California air districts listed at the beginning of this proposal. Pursuant to 40 CFR 71.5(a)(1)(i), major stationary sources which do not have an existing operating permit issued by a State (or local permitting authority) under an approved part 70 program, and which are applying for a part 71 permit for the first time, must submit an application within 12 months after becoming subject to the permit program or on or before such earlier date as the permitting authority may establish. Section 71.5(a)(1)(i) further provides that sources required to submit permit applications earlier than 12 months after becoming subject to part 71 shall be notified of the earlier submittal date at least 6 months in advance of the date.

In the event we finalize this rule as proposed and implement a part 71 program for state-exempt major stationary agricultural sources, we are proposing to establish the following permit application deadlines: (1) state-exempt agricultural stationary sources that are major sources, as defined in 40 CFR 71.2, due to emissions from diesel-powered engines [5] must submit part 71 permit applications to the EPA Region IX Permits Office no later than 6 months after the effective date of the partial part 71 program or May 1, 2003, whichever is later; and (2) any remaining state-exempt major stationary agricultural sources must submit part 71 permit applications to the EPA Region IX Permits Office no later than August 1, 2003, or 6 months after the effective date of the partial part 71 program, whichever is later.

IV. Request for Public Comment

We are soliciting public comment on all aspects of this proposal. Written comments will be considered before taking final action. To comment on today's proposal, you should submit comments by mail (in triplicate if possible) as described in the **ADDRESSES** section listed in the front of this document. We will consider any written comments received by September 3, 2002. We are establishing a longer comment period than the 30 days required under the Administrative Procedure Act (APA) so that the public comment period on today's proposal extends beyond the end of the 90-day period for the State to take significant action. This time frame will provide the public with an opportunity, in commenting on today's proposal, to also fully consider and address any action taken by the State during the 90-day period.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not alter the relationship or the

[5] Emissions from stationary diesel-powered engines are considered when determining a source's applicability to title V permitting requirements. Emissions from motorized vehicles and from diesel-powered engines (or other types of engines) that meet the 40 CFR 89.2 definition of ''nonroad engine'' are not counted in title V applicability determinations.

distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities. In developing the original part 70 regulations and the proposed revisions to part 70, the Agency determined that they would not have a significant economic impact on a substantial number of small entities. *See* 57 FR 32250, 32294 (July 21, 1992), and 60 FR 45530, 45563 (August 31, 1995). Similarly, the same conclusion was reached in an initial regulatory flexibility analysis performed in support of the 1996 part 71 rulemaking. *See* 61 FR 34202, 34227 (July 1, 1996); see also 64 FR 8262 (February 19, 1999). Only a small subset of sources subject to the part 71 rule would be affected by today's action. The prior screening analyses for the part 70 and part 71 rules were done on a nationwide basis without regard to whether sources were located within California and are, therefore, applicable to sources in California. Accordingly, EPA believes that the screening analyses are valid for purposes of today's action. And since the screening analyses for the prior rules found that the part 70 and 71 rules as a whole would not have a significant impact on a substantial number of small entities, today's action, which would affect a much smaller number of entities than affected by the earlier rules, also will not have a significant impact on a substantial number of small entities.

EPA believes that few if any small businesses involved in the production of crops or animals in California would be subject to part 71 as a result of this rule. First, EPA notes that the Small Business Administration, pursuant to its authority under 15 U.S.C. 632(a) and 634(b)(6), has established thresholds for various business sectors to be used in the determination of whether a business is ''small.'' *See,* 13 CFR part 121. For most businesses involved in the production of crops or animals (those that would most likely be subject to part 71 because of this rule), the SBA has set the ''small business'' threshold as $750,000 in annual receipts. (The threshold for cattle feedlots is $1.5 million; the threshold for chicken egg production is $9 million.) *See* 13 CFR 121.201; see also, 13 CFR 121.104. Businesses that have annual receipts in excess of that threshold are not ''small businesses.'' Second, EPA's rule would require only major sources of air pollution to obtain a part 71 operating permit. For instance, in the San Joaquin Valley, the threshold for major sources of oxides of nitrogen or volatile organic compounds is 25 tons per year; the threshold for major sources of particulate matter is 70 tons per year. Most other air districts in California have higher thresholds and consequently fewer sources in those districts would be subject to part 71. Furthermore, EPA does not include a source's fugitive emissions of criteria pollutants in determining whether part 71 applies to it. In addition, for sources that might have the potential to emit above the major source threshold, but have actual emissions below the threshold, the Agency has issued several policy memoranda explaining mechanisms for these sources to become ''synthetic minors.'' These sources are recognized as not emitting pollutants in major quantities and may avoid the requirement to obtain a part 71 permit. Moreover, to the extent there is any impact, it will not be significant because part 71 imposes few if any additional substantive requirements. EPA intends to provide assistance to all sources that would become subject to part 71 as a result of this rulemaking.

Consequently, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

I. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this action under the

provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* and has assigned OMB control number 2060–0336. The information is planned to be collected to enable EPA to carry out its obligations under the Act to determine which sources are subject to the Federal Operating Permits Program and what requirements should be included in permits for sources subject to the program. Responses to the collection of information will be mandatory under § 71.5(a) which requires owners or operators of sources subject to the program to submit a timely and complete permit application and under §§ 71.6 (a) and (c) which require that permits include requirements related to recordkeeping and reporting. As provided in 42 U.S.C. 7661b(e), sources may assert a business confidentiality claim for the information collected under section 114(c) of the Act.

In the Information Collection Request (ICR) document for the July 1996 final part 71 rule (ICR Number 1713.02), EPA estimated that 1,980 sources in 8 states would potentially be subject to part 71. EPA also estimated that the annual burden per source would be 329 hours, and the annual burden to the Federal government is 243 hours per source. EPA believes that these burden estimates are significantly higher than the burdens associated with the rule proposed today. First, EPA estimates that the number of agricultural sources in California will be significantly less than the number on which the July 1996 estimates were based. In addition, State and local laws have traditionally exempted agricultural sources from many air pollution regulations. Therefore, agricultural sources will have fewer applicable requirements than the average part 71 source; accordingly, the burdens associated with permit applications and recordkeeping and reporting requirements should be minimal and far less than those for the typical part 71 source. Today's action would impose no burden on State or local governments and no burden on Tribal agencies. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

List of Subjects 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: July 17, 2002.

Keith Takata,

Acting Regional Administrator, Region 9.

[FR Doc. 02–18715 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 67, No. 142
Wednesday, July 24, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Environmental Quality Incentives Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of availability of program funds for the Environmental Quality Incentives Program (EQIP).

SUMMARY: The Farm Security and Rural Investment Act of 2002, increased the funding authorized to implement the Environmental Quality Incentives Program (EQIP). The Commodity Credit Corporation (CCC) administers EQIP under the general supervision of the Chief of the Natural Resources Conservation Service (NRCS), who is one of the vice presidents of CCC. CCC hereby announces the availability of up to an additional $200 million in FY 02 funds to provide technical, financial, and educational assistance under EQIP for farmers and ranchers to promote agricultural production and environmental quality as compatible National goals for working agricultural lands. CCC also announces the availability of up to an additional $25 million of EQIP funds in FY 02 to provide technical and financial assistance for ground and surface water conservation. Finally, CCC announces the availability of up to an additional $50 million of EQIP funds to carry out water conservation activities in the Klamath Basin in California and Oregon.

This notice applies only to funds made available and obligated in FY 02. CCC will, at a later date, issue a proposed rule for FY 03 through FY 07 program implementation. The proposed rule will address and seek comment on a number of issues including: the process for establishing National priorities and criteria for optimizing environmental benefits, the administration of incentive payments and their potential for promoting innovation and technological improvements and rewarding performance, the process of allocating and focusing funding at state and local levels, and the systematic evaluation of program performance. It will also consider other issues including creation of an innovative grant program, integration of air quality as a program goal, and the ground and surface water conservation program.

DATES: July 24, 2002 to September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013; (202) 720–1845; fax: (202) 720–4265. Submit electronic requests for additional information to: *mark.berkland@usda.gov*.

SUPPLEMENTARY INFORMATION: CCC hereby announces the availability of up to an additional $200 million in FY 02 funds to provide technical, financial, and educational assistance under EQIP, 16 U.S.C. 3839aa, for farmers and ranchers to promote agricultural production and environmental quality as compatible goals for working agricultural lands. CCC announces the availability of up to an additional $25 million of EQIP funds in FY 02 to provide technical and financial assistance for ground and surface water conservation. Finally, CCC announces the availability of up to an additional $50 million of EQIP funds to carry out water conservation activities in the Klamath Basin in California and Oregon.

EQIP assistance promotes agricultural production and environmental quality as compatible goals, and strives to optimize environmental benefits. Through EQIP, CCC provides flexible technical, financial, and educational assistance to producers to install and maintain conservation systems that enhance soil, water, air quality, related natural resources, and wildlife while sustaining production of food and fiber. The statutory purposes for EQIP are to promote agricultural production and environmental quality as compatible goals and to optimize environmental benefits.

Background

EQIP was initially authorized by amendments made by the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127 (the 1996 Act), to the Food Security Act of 1985, Public Law 99–198 (the 1985 Act). Since FY 96, CCC has implemented EQIP through regulations promulgated at 7 CFR part 1466. These regulations continue to govern contracts entered into with funds made available prior to the passage of the Farm Security and Rural Investment Act of 2002, Public Law 107–171 (the 2002 Act). Producers who entered into EQIP contracts in FY 02 prior to May 13, 2002, may modify their FY 02 contracts to avail themselves of the changes made by the 2002 Act.

CCC administers EQIP funds under the general supervision of the Chief of the Natural Resources Conservation Service (NRCS), who is a vice president of CCC. The Farm Service Agency (FSA) provides support for program administrative processes.

Implementation of the 2002 Act in Fiscal Year 2002

Section 2301 of the 2002 Act made several changes to the implementation of EQIP that must be applied in order to implement the program in FY 02. CCC shall implement these statutory provisions in contracts entered into with the funds made available by the 2002 Act for FY 02 and described in this notice of availability. CCC will implement these new EQIP contracts in accordance with the program regulations found at 7 CFR part 1466 as conditioned by the changes required by the 2002 Act. Where there are inconsistencies or conflicts between the statute and regulations, the statutory provisions will prevail. The 2002 Act made the following changes to the implementation of EQIP necessary for FY 02:

1. The process of designating conservation priority areas has been eliminated and will no longer be used.

2. The requirement to maximize environmental benefits per dollar spent has been eliminated. In accordance with the 2002 Act, CCC will seek to optimize environmental benefits as determined by the NRCS State Conservationist with advice from the State Technical Committee.

3. If the environmental values of two or more applications are comparable, CCC will not assign a higher priority to an application simply because it would present the least cost to the program.

4. In evaluating applications, CCC will accord a higher priority to applications that encourage the use of cost-effective conservation practices and address national conservation priorities.

5. The limitation on the size of livestock operations eligible to receive financial assistance has been removed. All livestock operations are now eligible to receive financial and technical assistance as long as all other eligibility criteria are met. The 2002 Act also increased from 50 percent to 60 percent the total amount of funding to be obligated nationally for livestock practices. Thus the regulatory provisions found at 7 CFR 1466.4(e), 1466.7(b), and related limitations will not apply to new contracts entered into or modified under the 2002 Act.

6. CCC is now authorized to make incentive payments to producers to develop comprehensive nutrient management plans for confined livestock feed operations. In the case of a confined livestock feeding operation, to be eligible to receive cost-share payments or incentives payments for animal waste management under EQIP, a producer must submit a plan of operations that provides for developing and implementing a comprehensive nutrient management plan.

7. An EQIP contract must extend at least one year after the implementation of the last practice, but not exceed a total of 10 years in duration. Additionally, a producer may now receive payment during the first year of the contract period.

8. Participants are now subject to different payment limitation requirements. An individual or entity may not receive, directly or indirectly, on the aggregate, $450,000 for all EQIP contracts entered into by the individual or entity during the period of FY 02 through FY 07. Therefore, the current contract and payment limitations found at 7 CFR 1466.23(b) through (e) will not apply to new contracts entered into or modified under the 2002 Act. For a producer who inherits land under an EQIP contract during the contract period, the $450,000 individual or entity payment limitation will not apply to the extent that the payments from any contract on the inherited land causes any heir who was party to an EQIP contract on other lands prior to the inheritance to exceed the annual limit.

With regard to EQIP contracts on Tribal land, Indian trust land, or Bureau of Indian Affairs (BIA) allotted land, payments exceeding the $450,000 individual or entity payment limitation may be made to the Tribal venture if an official of the BIA or Tribal official certifies in writing that no one person directly or indirectly will receive more than the $450,000 payment during the period of FY 02 through FY 07. BIA or Tribal officials will be required to submit a listing of individuals that are receiving any of the EQIP funding and identify how much each individual has received.

A broad purpose for EQIP continues to be assisting producers comply voluntarily with local, State, and national environmental quality regulatory requirements concerning soil, water, and air quality; wildlife habitat; and surface and ground water conservation.

Application Process

CCC will consider for funding under this notice applications received throughout FY 02. The State Conservationist, working with the State Technical Committee, will widely distribute information on the availability of assistance, State and local goals, and the information needed to submit applications.

The applicants must meet the definition of ''person'' as set out in Section 1001(5) of the 1985 Act, as amended, 7 U.S.C. 1308(5), as determined by the Farm Service Agency (FSA). Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment.

Applicants must submit an application (CCC–1200 form) to CCC to be considered for participation in EQIP. Any producer who has eligible land may obtain and submit by mail, fax, or electronically an application for participation in EQIP to a USDA Service Center. Producers who are members of a joint operation must file a single application for the joint operation. An NRCS conservationist will be available to work with the applicant to collect the information necessary to evaluate the application using the current State or locally developed ranking criteria.

Additional requirements and information pertaining to the EQIP program relating to contracts, administrative requirements, and other matters can be found on CCC form CCC–1200, the Conservation Program Contract, and the appendix to form CCC–1200, both of which are available at local USDA service centers. Information is also available on the World Wide Web (WWW) at *http://www.nrcs.usda.gov/programs/farmbill/2002*.

Civil Rights

NRCS and CCC have collected civil rights data on farmers/ranchers participating in conservation programs. Based on past participation, it is estimated that the funding being made available with this notice will not negatively or disproportionately affect minorities, women, or persons with disabilities who are program beneficiaries or applicants for program benefits in NRCS- or CCC-assisted programs.

Environmental Evaluation

The Secretary of Agriculture will determine the actual level of funding for FY 02 from funds made available under the 1985 Act, as amended by the 2002 Act. While the actual level of funding is unknown at this time, based on the participation in existing soil and water conservation programs, it is estimated that this assistance could result in approximately 25,000 contracts. The environmental effects of any proposed actions under the EQIP contracts will be evaluated on an individual basis. Such individual evaluation is used to determine whether further environmental analysis is required. An Environmental Assessment was prepared for EQIP in 1996 and it is anticipated that the effects from EQIP activities authorized in FY 02 will not be significantly different than those identified in that assessment. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared for this notice.

Signed in Washington, DC, on July 10, 2002.

Bruce I. Knight,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. 02–18660 Filed 7–23–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Intent To Revise a Currently Approved Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44977, August 29, 1995), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES)

intention to revise a currently approved information collection entitled, ''Cooperative State Research, Education and Extension Service Application Kit for Research and Extension Programs.''

DATES: Comments on this notice must be received by September 27, 2002, to be assured of consideration.

ADDRESSES: Written comments concerning this notice may be mailed to Louise Ebaugh, Deputy Administrator; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2299; 1400 Independence Avenue, SW.; Washington, DC 20250–2299 or sent electronically to: *rfp-oep@reeusda.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection, contact Louise Ebaugh, (202) 720–9181.

SUPPLEMENTARY INFORMATION:

Title: Cooperative State Research, Education, and Extension Service Application Kit for Research and Extension Programs.

OMB Number: 0524–0039.

Expiration Date of Current Approval: March 31, 2004.

Type of Request: Revise a currently approved information collection.

Abstract: The Cooperative State Research, Education, and Extension Service (CSREES) sponsors ongoing agricultural research, extension, and education programs under which competitive, special, and other awards of a high-priority nature are made. Before awards can be made, certain information is required from applicants as part of an overall proposal package. In addition to project summaries, descriptions of the research, extension, or education efforts, literature reviews, curricula vitae of project directors, and other, relevant technical aspects of the proposed project, supporting documentation of an administrative and budgetary nature also must be provided.

Because of the nature of the competitive, peer-reviewed process, it is important that information from applicants be available in a standardized format to ensure equitable treatment. Each year, solicitations are issued requesting proposals for various research, education, and extension areas targeted for support. Applicants submit proposals for these targeted areas following formats outlined in the proposal application guidelines accompanying each program's solicitation. These proposals are evaluated by peer review panels and awarded on a competitive basis. Forms CSREES–2002, ''Proposal Cover Page;'' CSREES–2003, ''Project Summary;'' CSREES–2004, ''Proposal Budget;'' CSREES–2005, ''Current and Pending Support;'' CSREES–2006, ''National Environmental Policy Act Exclusions;'' CSREES–2007, ''Identification of Conflicts of Interest;'' CSREES–2008, ''Assurance Statement(s);'' and the Proposal Summary/Proposal Narrative (no assigned form number) are mainly used for proposal evaluation and administration purposes. While some of the information is used to respond to inquiries from Congress and other government agencies, the forms are not designed to be statistical surveys or data collection instruments. Their completion by potential recipients is a normal part of the application to agencies which support basic and applied science. The following information is collected:

Form CSREES–2002—Proposal Cover Page: Provides names, mailing and electronic addresses, and telephone numbers of project directors and authorized agents of applicant institutions and general information regarding the proposals.

Form CSREES–2003—Project Summary: Lists the Project Director(s) and their institution(s), project title and key words, and a project summary which allows for quick screening and assignment of proposals to peer reviewers.

Form CSREES–2004—Proposal Budget: Provides a breakdown of the purposes for which funds will be spent in the event of an award.

Form CSREES–2005—Current and Pending Support: Provides information for active and pending projects.

Form CSREES–2006—National Environmental Policy Act Exclusions: Allows identification of whether or not the proposal fits one of the exclusions listed for compliance with the National Environmental Policy Act (7 CFR Part 3407). This information is used in determining whether or not further action is needed to meet the requirements of this Act.

Form CSREES–2007—Identification of Conflicts of Interest: Lists the person(s) who are in conflict of interest with the applicant(s). This is used when selecting peer review panels to assure objective reviews.

Form CSREES–2008—Assurance Statement(s): Provides required assurances of compliance with regulations involving the protection of human subjects, animal welfare, and recombinant DNA research. This form is be used for competitive, special, and formula-funded projects.

Proposal Summary/Proposal Narrative: Provides a description of the proposed activity for which support is requested including objectives, plan of operation, and the project's significance to higher education in the food and agricultural sciences.

New Form CSREES–2010—Fellowships/Scholarships Entry/Exit Form: This form will only apply to recipients of a CSREES fellowship or scholarship. The form will be used to document fellowship appointments and scholarships, pertinent demographic data on the fellows/scholars, and documentation of the progress of the fellows/scholars under the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 24.75.

Respondents: Non-profit institutions, and State, local, or Tribal governments.

Estimated Number of Respondents: For applicants: 7,150 each for the Proposal Summary/Proposal Narrative and Forms CSREES–2002, –2003, –2004, –2005, –2006, and –2007 and 9,450 for Form CSREES–2008. For grantees: 50 for Form CSREES–2010.

Estimated Total Annual Burden on Respondents: 156,813 hours broken down by: 21,450 hours for Form CSREES–2002, ''Proposal Cover Page,'' (three hours per response); 3,575 hours for Form CSREES–2003, ''Project Summary,'' (one-half hour per response); 7,150 hours for Form CSREES–2004, ''Proposal Budget,'' (one hour per response); 7,150 hours for Form CSREES–2005, ''Current and Pending Support,'' (one hour per response); 1,788 hours for Form CSREES–2006, ''National Environmental Policy Act Exclusions,'' (one-quarter hour per response); 3,575 hours for Form CSREES–2007, ''Identification of Conflicts of Interest,'' (one-half hour per response); 4,725 hours for Form CSREES–2008, ''Assurance Statement,'' (one-half hour per response); 107,250 for the ''Proposal Summary/Proposal Narrative,'' (an average of 15 hours per response); and 150 hours for Form CSREES–2010, ''Fellowships/Scholarships Entry/Exit Form,'' (three hours per response).

Frequency of Respondents: Annually.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including

through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the address stated in the preamble.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Done at Washington, DC, this 16th day of July, 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–18647 Filed 7–23–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service; Notice of Intent To Establish an Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44977, August 29, 1995), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request approval to establish an information collection for reviewers of proposals for Federal financial assistance.

DATES: Written comments on this notice must be received by September 27, 2002, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDITIONAL INFORMATION OR COMMENTS: Contact Robert C. MacDonald, Grants Policy Program Leader, Information Systems and Technology Management, CSREES, USDA, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250–2216. Telephone (202) 205–5967. E-mail: *rmacdonald@reeusda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Questionnaire for Potential Reviewers.

OMB Number: 0524–NEW.

Expiration Date of Current Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection for three years.

Abstract: CSREES administers competitive, peer-reviewed agricultural research, education, and extension programs, under which awards of a high-priority nature are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101), the Smith-Lever Act, as amended (7 U.S.C. 341 *et seq.*), and other legislative authorities.

CSREES receives approximately 6,000 agricultural research, education, and extension proposals per year, of which approximately 2,000 are awarded. The majority of these proposals are subjected to a rigorous peer-review process involving technical experts (e.g., scientists, educators, farmers, engineers, extension specialists) located worldwide. Given the highly technical nature of many of these proposals, the quality of the peer-review greatly depends on the appropriate matching of the proposal subject matter with the technical expertise of the reviewer. As a result, a single database of technical experts is an invaluable tool for CSREES in accomplishing a suitable marriage of proposal content with reviewer expertise.

A single database of technical experts will serve as the central location for CSREES to determine which individuals would be most suitable to review proposals and to seek the individuals participation in the peer-review process. It will also enable CSREES to consider the characteristics of a possible peer-review panel. CSREES strives to have balanced panels of discipline, geography, institutional affiliation, rank, and women and minorities.

To populate and update the database with accurate information, CSREES is seeking clearance to conduct an annual survey. The survey will be in the form of a questionnaire sent to individuals who have the technical expertise as determined through their professional affiliation or some other means. The survey will be sent via e-mail, hard copy, or other appropriate mechanism. The survey will request the individual provide/update data including geographical and expertise information and their willingness to serve as a CSREES peer reviewer.

The database will be the source of information for CSREES to arrange the review of proposals by qualified personnel. The results of the review process extend into the CSREES award process. Therefore, the information collection will serve as an integral part of the CSREES peer-review and award process. The following information will be collected:

Form CSREES–New—Questionnaire for Potential Reviewers: Will be used to update/provide data such as geographical and expertise information, and willingness to review proposals submitted to CSREES.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average ten (10) minutes per response.

Respondents: Individuals.

Estimated Number of Responses per Form: 75,000.

Estimated Total Annual Burden on Respondents: 12,500 hours.

Frequency of Responses: Annually.

Copies of this information collection can be obtained from Robert C. MacDonald, Grants Policy Program Leader, Information Systems and Technology Management, CSREES, USDA, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250–2216. Telephone (202) 205–5967. E-mail: rmacdonald@reeusda.gov.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Done at Washington, DC, this 16th day of July, 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–18648 Filed 7–23–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of resource advisory committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday,

August 19, 2002. The Madera Resource Advisory Committee will meet at the Spring Valley Elementary School in O'Neals, CA. The purpose of the meeting is to review committee effort, discuss meeting schedule and discuss chairperson/committee duties.

DATE: The Madera Resource Advisory Committee meeting will be held Monday, August 19, 2002. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Spring Valley Elementary School, 46655 Road 200, O'Neals, CA 93645

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA 93643 (559) 877–2218 ext. 3100 e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review committee efforrt, (2) discuss meeting schedule, and (3) discuss chairperson/committee duties. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 17, 2002.

David W. Martin,

District Ranger.

[FR Doc. 02–18668 Filed 7–23–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Aging Flood Control Dams, OK

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the rehabilitation of Site Number 6, Cavalry Creek Watershed, Oklahoma.

FOR FURTHER INFORMATION CONTACT: M. Darrel Dominick, State Conservationist, Natural Resources Conservation Service, 100 USDA Suite 206, Stillwater, Oklahoma 74074, (405) 742–1204.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, M. Darrel Dominick, State Conservationist has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns watershed protection and flood prevention. Alternatives under consideration to reach these objectives include rehabilitation, no action, nonstructural measures, and decommissioning.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meetings will be held at 8:30 a.m. on July 16, 2002, at the NRCS Field Service Center, 1505 N. Glenn English, Cordell, Oklahoma, to determine the scope of the evaluation of the proposed action. Further information on the proposed action or the scoping meeting may be obtained from M. Darrel Dominick, State Conservationist, at the above address or telephone number.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Dated: March 26, 2001.

M. Darrel Dominick,

State Conservationist, Oklahoma.

[FR Doc. 02–18659 Filed 7–23–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Margaret Creek Watershed, Athens County, OH; Finding of No Significant Impact

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Rules (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation project for Floodwater Retarding Structure 2 in the Margaret Creek Watershed.

FOR FURTHER INFORMATION CONTACT: Kevin Brown; State Conservationist; Natural Resources Conservation Service; 200 North High Street, Room 522, Columbus, Ohio 43215; telephone 614–255–2500.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national effects on the human environment. As a result of these findings, Kevin Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The project purpose is flood prevention. The action includes a combination of widening the emergency spillway by 150 feet and utilizing this fill to raise the dam approximately 2.5 feet. The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency; various Federal, state and local agencies; and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Kevin Brown.

No administrative action on implementation of the preferred alternative will be taken until 30 days after the date of this publication in the **Federal Register**.

Kevin Brown,

State Conservationist.

[FR Doc. 02–18658 Filed 7–23–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty

Administrative Reviews and Requests for Revocation in Part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part.

EFFECTIVE DATE: June 24, 2002.

FOR FURTHER INFORMATION CONTACT: Holly Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202)482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2000), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan and Polyethylene Terephthalate Film, Sheet and Strip (Pet Film) from the Republic of Korea.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2003.

	Period to be reviewed
Antidumping Duty Proceedings	
Japan:	
Hot-Rolled Flat-Rolled Carbon-Quality Steel Products, A–588–846	06/01/01–05/31/02
Kawasaki Steel Corporation	
Sumitomo Metal Industries, Ltd.	
Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe, A–588–850	06/01/01–05/31/02
Kawasaki Steel Corporation	
NKK Tubes	
Sumitomo Metal Industries, Ltd.	
Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe, A–588–851	06/01/01–05/31/02
Kawasaki Steel Corporation	
NKK Tubes	
Sumitomo Metal Industries, Ltd.	
Republic of Korea:	
Polyethylene Terephthalate Film, Sheet and Strip (Pet Film), A–580–807	06/01/01–05/31/02
Hyosung Corporation	
Taiwan:	
Certain Stainless Steel Butt-Weld Pipe Fittings, A–583–816	06/01/01–05/31/02
Liang Feng Stainless Steel Fitting Co., Ltd.	
Ta Chen Stainless Steel Pipe, Ltd.	
Tru-Flow Industrial Co., Ltd.	
The People's Republic of China:	
Certain Non-Frozen Apple Juice Concentrate [1], A–570–855	06/01/01–05/31/02
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.	
Sanmenxia Lakeside Fruit Juice Co., Ltd.	
SDIC ZhongLu Fruit Juice Co.	
Yantai Oriental Juice Co., Ltd.	
Qingdao Nannan Foods Co., Ltd.	
Xian Asia Qin Fruit Co., Ltd.	
Xianyang Fuan Juice Co., Ltd.	
Changsha Industrial Products & Minerals Import & Export Co.	
Shandong Foodstuffs Import & Export Corporation	
Shaanxi Hengxing Fruit Juice Co., Ltd.	
Shaanxi Machinery and Equipment Import and Export Corporation	
Shaanxi Gold Peter Natural Drink Co., Ltd.	
Synthetic Indigo [2], A–570–856	06/01/01–05/31/02
Liyang Skyblue Chemical Co., Ltd.	
Silicon Metal [3], A–570–806	06/01/01–05/31/02
Groupstars Chemical Co., Ltd.	
China Shanxi Province Lin Fen Prefecture Foreigh Trade Import and Export Corp.	
Tapered Roller Bearings,[4] A–570–601	06/01/01–05/31/02
China National Machinery Import & Export Corp.	
Liaoning MEC Group Co., Ltd.	
Luoyang Bearing Corporation	
Peer Bearing Company-Changshan	
Tianshui Hailin Import & Export Corp.	
Wanxiang Group Corporation	
Yantai Timken Co., Ltd.	
Countervailing Duty Proceedings: None	
Suspension Agreements: None	

[1] If one of the above named companies does not quality for a separate rate, all other exporters of non-frozen apple juice concentrate from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of synthetic indigo from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of silicon metal from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[4] If one of the above named companies does not qualify for a separate rate, all other exporters of tapered roller bearings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 18, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–18730 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Initiation of Antidumping Duty Investigation: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Lisa Shishido, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208, (202) 482–0413, respectively.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR Part 351 (2002).

The Petition

On June 28, 2002, the Department of Commerce (''Department'') received a petition on imports of certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam'') filed in proper form by Catfish Farmers of America (''CFA'') and the individual U.S. catfish processors America's Catch Inc.; Consolidated Catfish Co., L.L.C.; Delta Pride Catfish, Inc.; Harvest Select Catfish, Inc.; Heartland Catfish Company; Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co., Inc., hereinafter referred to collectively as ''the Petitioners.'' On July 3, 2002, the Department requested clarification of certain areas of the petition and received a response on July 10, 2002. A second request for clarification was sent on July 9, 2002, and the Department received a response on July 11, 2002.

In accordance with section 732(b) of the Act, the Petitioners allege that imports of certain frozen fish fillets from Vietnam are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States.

The Petitioners are domestic farmers and processors of catfish and account for over fifty percent of domestic production of catfish fillets, as defined in the petition. Therefore, the Department finds that the Petitioners have standing to file the petition because they are interested parties as defined under section 771(9)(C) of the Act, with respect to the merchandise subject to this investigation. The Petitioners have demonstrated sufficient industry support with respect to the antidumping duty investigation they are requesting the Department to initiate (*see* ''Determination of Industry Support for the Petition'' below).

Scope of Investigation

For purposes of this investigation, the product covered is frozen fish fillets, including regular, shank, and strip fillets, whether or not breaded or marinated, of the species Pangasius Bocourti, Pangasius Hypophthalmus (also known as Pangasius Pangasius), and Pangasius Micronemus. The subject merchandise will be hereinafter referred to as frozen ''basa'' and ''tra'' fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 [1] (Frozen Sole Fillets) of the Harmonized Tariff Schedule of the United States (''HTSUS''). This investigation covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

During our review of the petition, we discussed the scope with the Petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27295, 27323 (1997). The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice.

Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street

[1] The Petitioners have included this tariff classification code because they believe that the merchandise under investigation is entering the United States under this classification based on previous uses of the term 'sole' to describe Vietnamese basa and tra.

and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. In investigations involving a processed agricultural product that is produced from a raw agricultural product, section 771(4)(E) of the Act provides that the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if (1) the processed agricultural product is produced from the raw agricultural product through a continuous line of production and (2) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may include price, added market value, or other economic interrelationships.

Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to growers, processors, and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the domestic like product referred to in the petition is the single domestic like product defined in the ''Scope of Investigation'' section, above. At this time, the Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

Moreover, the Department has determined that the petition contains adequate evidence of industry support; therefore, polling was unnecessary (*see Initiation Checklist* Re: Industry Support, July 18, 2002) (''*Initiation Checklist*''). To the best of the Department's knowledge, producers supporting the petition represent over 50 percent of total production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9)(A), (C), (D), (E), or (F) of the Act has expressed opposition to the petition.

Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price

The following is a description of the allegation of sales at less than fair value (''LTFV'') upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and factors of production are also discussed in the *Initiation Checklist.* Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine the information and revise the margin calculations, if appropriate.

The Petitioners identified approximately fifty-three Vietnamese companies as major producers and exporters of frozen fish fillets in Vietnam. *See Initiation Checklist* at Attachment I.

The Petitioners submitted LTFV analyses for Vietnam as a non-market economy and a market economy. Consequently, the Petitioners calculated an export price using a non-market economy and a market economy analysis.

In both the non-market economy and the market economy analysis, the Petitioners based export price (''EP'') on quantities and free on board (''FOB'') values from Bureau of Census'' import statistics, using the weighted average unit values of the merchandise subject to this investigation classifiable under HTSUS category 0304.20.60.30. To obtain ex-factory prices, in both instances, the Petitioners adjusted the average unit value for brokerage and handling and inland freight costs. *See Initiation Checklist* for further information.

Normal Value: Nonmarket Economy

The Petitioners provided a dumping margin calculation using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C). For the normal value (''NV'') calculation, petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor and energy), for certain frozen fish fillets on information from a U.S. catfish producer. The Petitioners asserted that they did not have specific, reliable information on frozen basa and tra fillet production factors in Vietnam. However, according to the Petitioners, all catfish processors, whether they are located in the United States or Vietnam, perform the same basic steps in producing frozen fish fillets. Therefore, the Petitioners relied upon U.S. production factors for the NV calculation, after adjusting for known differences in Vietnam. *See Initiation Checklist.*

The Petitioners selected India as their surrogate country. The Petitioners argued that pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to the NME and is a significant producer of comparable merchandise. Based on the information provided by the Petitioners, we believe that the Petitioners' use of India as a surrogate country is appropriate for purposes of initiation of

[2] *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

this investigation. *See Initiation Checklist.*

In accordance with section 773(c)(4) of the Act, the Petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain raw materials, the Petitioners used import statistics from India, as reported in Indian *Monthly Statistics of Foreign Trade of India,* Vol. II–Imports, Directorate General of Commercial Intelligence & Statistics, Ministry of Commerce, Government of India, Calcutta, excluding those values from countries previously determined by the Department to be NME countries. For inputs valued in Indian Rupiah and not contemporaneous with the period of investigation (''POI'') (*i.e.,* October 2001—March 2002), the Petitioners used information from the wholesale price indices (''WPI'') in India as published by the Office of the Economic Adviser in the Indian Ministry of Commerce and Industry, March 2002, to determine the inflation adjustment.

To value live fish, the major input, the Petitioners stated that since Indian *Monthly Statistics of Foreign Trade of India* were not specific to the merchandise subject to this investigation, the surrogate value was based on the average price of catfish in India from the United Nations Food and Aquaculture Organization (''FAO'') FishStat Plus Database. The Petitioners explained their efforts in obtaining alternative surrogate values and the reliability of the FAO data in Exhibit 22 of the Petition. The Petitioners noted that because the FAO price is reported in dollars, they deflated the price to the October 2001 to March 2002 period by using the United States purchase price index (''PPI''), as published by the United States Bureau of Labor Statistics. *See Initiation Checklist.*

The Petitioners explained that the production of frozen catfish fillets generates waste, as the head, tail, skin and viscera are all discarded. According to the Petitioners, in the United States, processors recover the waste and sell it to rendering plants where it may be used for further processing into products such as fish meal or fish oil. Furthermore, according to the Petitioners, the Vietnamese processors require 3.51 pounds of live fish to produce one pound of fillets, and therefore, the waste quantity would be 2.51 pounds for every pound of fish fillet. Because the Petitioners could not obtain any information on the recovery of offal by Vietnamese processors, they deducted from the total material cost an amount for waste recovery based on their own experience. The Petitioners were also unable to obtain a value for fish offal in India. Therefore, pursuant to 19 CFR 351.202(b)(7)(i)(B), the value of offal is based on the experience of a U.S producer's average for year 2000 and 2001. *See Initiation Checklist.*

For water, the Petitioners calculated a surrogate value based on price data in India as reported by the Second Water Utilities Data Book, Asian and Pacific Region, published the Asian Development Bank. The Petitioners applied the WPI to inflate the water price to the POI. *See Initiation Checklist.* Data from the Asian Development Bank has previously been used by the Department. *See Notice of Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews, Partial Rescission of the Antidumping Duty Administrative Review, and Rescission of a New Shipper Review, Fresh Water Crawfish Tail Meat from the People's Republic of China (''Crawfish'')* 65 FR 60399, 60404 (October 11, 2000).

To value electricity in India, the Petitioners relied upon the Organization for Economic Cooperation and Development's (''OECD'') *Energy Prices and Taxes* data. The Petitioners applied the Indian WPI to inflate the electricity price to the POI. *See Initiation Checklist.*

Pursuant to 19 CFR 351.408(c)(3), the Department calculates and publishes the surrogate values for labor to be used in non-market economy cases. The Petitioners explained that because the Department has not yet published a labor rate for Vietnam, they have applied the regression formula published on the Department's website to derive the Vietnamese labor rate that would be calculated using the Department's methodology. *See Initiation Checklist.*

The Petitioners calculated a simple average for factory overhead, selling, general and administrative expenses (SG&A), interest, and profit, which were derived from the 2000–2001 financial statements of NCC Blue Water Products, Ltd., Integrated Rubian Exports, Ltd. and Uniroyal Marine Exports, Ltd., Indian producers of frozen fish fillets.

We made adjustments to NV for sodium tripolyphosphate, propane and the packing materials. For further information, see the *Initiation Checklist.*

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margin for certain frozen fish fillets from Vietnam applying the non-market economy methodology is 190.20 percent.

Normal Value: Market Economy

The price and cost data provided by the Petitioners was examined for reasonableness and accuracy. The Petitioners stated that they were unable to obtain information on home market or third country prices of Vietnamese frozen fish fillets, despite extensive research using the Internet and data sources published by organizations such as the World Bank, International Monetary Fund, Asian Development Bank, and Bureau of Labor Statistics.

Pursuant to 19 CFR 351.202(b)(7)(i)(B), the Petitioners calculated the NV based on constructed value (''CV''), using U.S. production costs and factors that have been adjusted for known differences in production in Vietnam. *See* Initiation Checklist. The Petitioners calculated the production costs and factors provided by a domestic U.S. producer of frozen fish fillets where the Petitioners were unable to obtain Vietnamese pricing information. Specifically, the Petitioners were only able to obtain published Vietnamese input prices for live fish, labor, electricity, and water. To value the fish waste offset, sodium tripolyphosphate, propane, and packing materials, the Petitioners used U.S. producer input costs. To value factory overhead, SG&A and Profit, the Petitioners used a U.S. producer's financial statement information[3]. *See Initiation Checklist.* The values submitted by the Petitioners to calculate the CV consist of information reasonably available, and are therefore acceptable for purposes of initiation.

Based on comparisons of EP to NV, calculated in accordance with section 773(a)(c) of the Act, the estimated recalculated dumping margin for certain frozen fish fillets from Vietnam applying the market economy methodology is 143.7 percent.

Fair Value Comparisons

Based on the data provided by the Petitioners, there is reason to believe that imports of frozen fish fillets from Vietnam are being, or are likely to be, sold in the United States at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like

[3] For purposes of initiation we are accepting the Petitioners' use of a U.S. catfish processor's financial statement information to derive the financial and profit ratios, but note that in the event that we rely on Petition information as facts available, we may re-examine the appropriateness of the U.S. producers' information as the basis for calculating the financial and profit ratios.

product is being materially injured and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The Petitioners contend that the industry's injured condition is evident in (1) reduced shipments; (2) reduced prices; (3) declining employment; (4) declining production and capacity utilization; (5) growing inventories; and (6) significant financial losses.

The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation.

Initiation of Antidumping Investigation

Based upon our examination of the Petition on frozen fish fillets from Vietnam, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of frozen fish fillets from Vietnam are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to the government representatives of Vietnam. We will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than August 12, 2002, whether there is a reasonable indication that imports of frozen fish fillets from Vietnam are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: July 18, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–18731 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Non-Frozen Apple Juice Concentrate from the People's Republic of China: Initiation of Antidumping New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping New Shipper Review.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper review of the antidumping duty order on non-frozen apple juice concentrate from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214, we are initiating this new shipper review.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Audrey Twyman or Stephen Cho, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1778, (202) 482–3534, and (202) 482–3798 respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA''), effective January 1, 1995 (''the Act''). The Department of Commerce (''the Department'') is conducting this new shipper review in accordance with section 751(a)(2)(B) of the Act. In addition, all references to the Department's regulations are to 19 CFR Part 351 (2002).

Background

On June 25, 2002, the Department received a request from Gansu Tongda Fruit Juice and Beverage Co., Ltd. (''Gansu Tongda''), pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 351.214(b), to conduct a new shipper review of the antidumping duty order on non-frozen apple juice concentrate (''NFAJC'') from the People's Republic of China (''PRC''). This order has a June anniversary month.

Initiation of Review

Pursuant to 19 CFR 351.214(b), Gansu Tongda certified in its request that it did not export the subject merchandise to the United States during the period of investigation (''POI'') (October 1, 1998 through March 31, 1999), that it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI, and that its export activities are not controlled by the central government of the PRC. Gansu Tongda submitted documentation establishing: (i) the date on which its NFAJC was first shipped to the USA; (ii) the volume of that shipment; and (iii) the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214, we are initiating a new shipper review of the antidumping duty order on NFAJC from the PRC. In accordance with 19 CFR 351.214(h)(i), we intend to issue the preliminary results of this review not later than 180 days from the date of publication of this notice. All provisions of 19 CFR 351.214 will apply to Gansu Tongda throughout the duration of this new shipper review. Pursuant to 19 CFR 351.214(g)(1)(i)(A), the standard period of review in a new shipper review initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the anniversary month.

Antidumping Duty Proceeding	Period to be Reviewed
People's Republic of China: Non-Frozen Apple Juice Concentrate, A–570–855: Gansu Tongda Fruit Juice and Beverage Co., Ltd.	06/01/01 through 05/31/02

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for

each entry of the merchandise exported by the company listed above, until the completion of the review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: July 11, 2002.

Richard W. Moreland,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. 02–18729 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Certain Polyester Staple Fiber from Taiwan: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: In response to a May 31, 2002, request made by Far Eastern Textile, Ltd., and Nan Ya Plastics Corporation, Ltd., producers/exporters of certain polyester staple fiber in Taiwan, the Department of Commerce published the initiation of an administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan for Far Eastern Textile, Ltd. and Nan Ya Plastics Corporation, Ltd. covering the period May 1, 2001, through April 30, 2002. This review has now been rescinded as a result of the withdrawal of the requests for review by Far Eastern Textile, Ltd. and Nan Ya Plastics Corporation, Ltd.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0176.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the ''Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department'') regulations refer to 19 CFR part 351 (2002).

Background

On May 25, 2000, the Department published an antidumping duty order on certain polyester staple fiber from Taiwan. *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 65 FR 33807. On May 31, 2002, Far Eastern Textile, Ltd. (''FETL'') and Nan Ya (''Nan Ya'') Plastics Corporation, Ltd., producers/exporters of certain polyester staple fiber in Taiwan, requested an administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan covering the period May 1, 2001, through April 30, 2002. In accordance with 19 CFR 351.221(c)(1)(i), we published the initiation of the review on June 25, 2002. *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocations in Part*, 67 FR 42753. On July 9, 2002, FETL and Nan Ya withdrew their requests for review.

Rescission of Review

The Department's regulations provide that the Department will rescind an administrative review if a party that requested a review withdraws the request within ninety days of the date of publication of the notice of initiation of the requested review. 19 CFR 351.213(d)(1). FETL's and Nan Ya's requests for review were withdrawn within the ninety-day deadline. Therefore, we have accepted FETL's and Nan Ya's withdrawal of their requests for review.

As a result of the withdrawals of the requests for review and because the Department received no other request for review, the Department is rescinding this administrative review.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: July 17, 2002

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–18728 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071702E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Stock Assessment Review (STAR) Panel for yelloweye rockfish will hold a work session which is open to the public.

DATES: The yelloweye rockfish Stock Assessment Review Panel will meet beginning at 11:30 a.m.on Sunday, August 11, 2002. The meeting will continue on August 12, 2002 beginning at 8 a.m. through August 14, 2002. The meetings will end at 5 p.m. each day, or as necessary to complete business.

ADDRESSES: The yelloweye rockfish Stock Assessment Review Panel meeting will be held at the NMFS Northwest Fisheries Science Center, 2725 Montlake Blvd. E, Seattle, WA 98112; telephone: 206–860–3200 August 11 through August 13, 2002 in the Auditorium, and on August 14, 2002 in Room 370 W.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer; 503–820–2280; toll-free: 866–806–7204.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft stock assessment documents and any other pertinent information, work with the Stock Assessment Team to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons.

Entry to the Northwest Fisheries Science Center requires identification with photograph (such as a student ID, state drivers license, etc.) A security guard will review the identification and

issue a Visitor's Badge valid only for the date of the meeting.

Although nonemergency issues not contained in STAR Panel agendas may come before the STAR Panel for discussion, those issues may not be the subjectof formal Panel action during this meeting. STAR Panel action will be restricted to those issues specifically listed in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 (toll-free 866–806–7204) at least 5 days prior to the meeting date.

Dated: July 17, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18739 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070202E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Marine Reserves Policy Committee will hold a working meeting which is open to the public.

DATES: The meeting will be held on Wednesday, August 14, 2002, from 12 noon to 5 p.m., and on Thursday, August 15, 2002, from 8 a.m. to 12 noon.

ADDRESSES: The meetings will be held at a location to be announced on the Pacific Fishery Management Council's website (*www.pcouncil.org*) by July 15, 2002.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Jennifer Gilden, Associate Staff Officer; telephone: (866) 806–7204.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to consider policy recommendations for marine reserve proposals for the state waters of the Channel Islands National Marine Sanctuary.

Although nonemergency issues not contained in the Ad Hoc Marine Reserves Policy Committee meeting agenda may come before the Ad Hoc Marine Reserves Policy Committee for discussion, those issues may not be the subject of formal Ad Hoc Marine Reserves Policy Committee action during this meeting. Ad Hoc Marine Reserves Policy Committee action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Ad Hoc Marine Reserves Policy Committee intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 18, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18740 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071202F]

Endangered Species; File No. 1299

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for modification.

SUMMARY: Notice is hereby given that Raymond R. Carthy, Ph.D., Florida Cooperative Fish and Wildlife Research Unit, USGS-BRD, Department of Wildlife Ecology and Conservation, University of Florida, P.O. Box 110485, Gainesville, FL 23611–0450, has requested a modification to scientific research Permit No. 1299.

DATES: Written or telefaxed comments must be received on or before August 23, 2002.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1299, issued on May 24, 2001, (66 FR 29934) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. 1299 authorizes the permit holder to capture, handle, photograph, measure, flipper and PIT tag, collect tissue samples from and release loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and Kemp's ridley (*Lepidochelys kempi*) sea turtles. The purpose of the research, as stated in the application, is to examine the inter-nesting movements and habitat usage of adult loggerhead turtles along the northwestern coast of Florida, while also examining species composition, population densities and habitat utilization in coastal bays in the same area. The permit holder requests authorization to increase the annual allowed take of sea turtles from 100 to 300 for the remainder of the permit which expires on December 31, 2003.

In compliance with the National Environmental Policy Act of 1969 (42

U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: July 18, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–18741 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062802C]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for a renewal of its Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to seismic retrofit construction of the Richmond-San Rafael Bridge (the Bridge), San Francisco Bay (SFB), CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to renew a small take authorization to CALTRANS to incidentally take, by harassment, small numbers of Pacific harbor seals and possibly California sea lions for 1 year.

DATES: Comments and information must be received no later than August 23, 2002.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Comments cannot be accepted if submitted via e-mail or the Internet. A copy of the application, Environmental Assessment (EA) and/or monitoring reports may be obtained by writing to this address or by telephoning the contact listed here. Publications referenced in this document are available for viewing, by appointment during regular business hours, at this address.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On May 28, 2002, NMFS received a letter from CALTRANS, requesting reauthorization of an IHA that was first issued to it on December 16, 1997 (62 FR 6704, December 23, 1997), and was renewed on January 8, 2000 (65 FR 2375, January 14, 2000) and September 19, 2001 (66 FR 49165, September 26, 2001). The current IHA expires on September 18, 2002. The renewed authorization request is for the possible harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) and possibly some California sea lions (*Zalophus californianus*), incidental to seismic retrofit construction of the Bridge.

The Bridge is being seismically retrofitted to withstand a future severe earthquake. Construction is scheduled to extend until the year 2005. A detailed description of the work planned is contained in the Final Natural Environmental Study/Biological Assessment for the Richmond-San Rafael Bridge Seismic Retrofit Project (CALTRANS, 1996). Among other things, seismic retrofit work will include excavation around pier bases, hydro-jet cleaning, installation of steel casings around the piers with a crane, installation of micro-piles, and installation of precast concrete jackets. Foundation construction will require approximately 2 months per pier, with construction occurring on more than one pier at a time. In addition to pier retrofit, superstructure construction and tower retrofit work will also be carried out. Because seismic retrofit construction between piers 52 and 57 has the potential to disturb harbor seals hauled out on Castro Rocks, an IHA is warranted. The duration for the seismic retrofit of foundation and towers on piers 52 through 57, which began this year, will take approximately 7 to 8 months to complete.

Description of Habitat and Marine Mammals Affected by the Activity

A description of SFB ecosystem and its associated marine mammals can be found in the original CALTRANS application (CALTRANS 1997) and in CALTRANS (1996). Castro Rocks are a small chain of rocky islands located next to the Bridge and approximately 1500 ft (460 m) north of the Chevron Long Wharf. They extend in a southwesterly direction for approximately 800 ft (240 m) from pier 55. The rocks start at about 55 ft (17 m) from pier 55 (A rock) and end at approximately 250 ft (76 m) from pier 53 (F rock). The chain of rocks is

exposed during low tides and inundated during high tide.

Marine Mammals

General information on harbor seals and other marine mammal species found in Central California waters can be found in Forney et al. (2000, 2001), which are available at the following URL: http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__

Program/sars.html Refer to those documents for information on these species. The marine mammals likely to be affected by work in the Bridge area are limited to harbor seals and California sea lions.

The harbor seal is the only marine mammal species expected to be found regularly in the Bridge area. A detailed description of harbor seals was provided in the 1997 notification of proposed authorization (62 FR 46480, September 3, 1997) with corrections and clarifications provided in the notice of IHA issuance (62 FR 67045, December 23, 1997). This information is not repeated here, but may be referenced at the following URLs:

http://frwebgate4.access.gpo.gov/cgi-bin/ waisgate.cgi? WAISdoc

ID=9398588449 +1 +0 +0 & WAI Saction =retrieve

http://frwebgate3.access.gpo.gov/cgi-bin/ waisgate.cgi?WAISdoc

ID=94045429635 + 0 + 0 + 0& WAI Saction = retrieve

It should be noted that pups are born in mid- to late-March, peak numbers of pups are observed in early May, and, by the first week in June, all pups are weaned (Kopec and Harvey, 1995). Estimated pup counts at Castro Rocks were 35 in 1999, 40 in 2000 and 40 in 2001 (A. Bohorquez pers. comm in Green *et al.*, 2001). This represents approximately 22–24 percent of the pups born in SFB.

The California sea lion primarily uses the Central SFB area to feed. California sea lions are periodically observed at Castro Rocks. No pupping or regular haulouts occur in the project area.

Potential Effects on Marine Mammals

The impact to the harbor seals and California sea lions is expected to be disturbance by the presence of workers, construction noise, and construction vessel traffic. Disturbance from these activities is expected to have only a short-term negligible impact to a small number of harbor seals and sea lions. These disturbances will be reduced to the lowest level practicable by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

Marine mammal monitoring under the current and previous IHAs has been conducted at Castro Rocks and at two ''control'' haul-out locations in SFB, Mowry Slough and Yerba Buena Island (Green et al., 2001, 2002) since 1998. To date, over 10,000 hours of observations have been conducted at these sites with two-thirds of those hours at Castro Rocks. While disturbances can consist of head alerts, approaches to the water, and flushes into the water, only the latter behavior is considered by NMFS to rise to Level B harassment. At Castro Rocks, of all flush disturbances monitored during the day, the major harassment sources were watercraft (e.g. motorboats, sailboats, tankers, kayaks and jet skis) with 0.128 disturbances/hr field time (d/hr); wildlife (seals and birds) with 0.075 d/hr; anthropogenic (debris, workmen on bridge with 0.040 d/hr; and ''research'' with 0.021 d/hr. Construction activities resulted in 0.0165 d/hr. There were fewer flushes observed at night. For more detailed information on the extent of take by harassment at Castro Rocks by activities other than the requested authorization, refer to Green et al. (2002).

During the work period (August 1 through February 14), the incidental harassment of harbor seals and, on rare occasions, California sea lions is expected to occur on a daily basis upon initiation of the retrofit work. In addition, the number of seals disturbed will vary daily depending upon tidal elevations. Monitoring by Green et al. (2002) indicates that although overall seal numbers each month of the year are not significantly different across years, there are differences in subsite use by seals at Castro Rocks during both the daytime and nighttime. For example, the average number of seals hauled out on Castro Rocks (rocks A and C) during the fall of 2001 (when construction activity was taking place within the area of the haul-out site) was significantly different than the average number of seals hauled out on Castro Rocks during 1998–2000, prior to the construction period. It was noted that fewer seals were using rock A, located closest to the Bridge, and more seals were hauling out on rock C, which was located farther from the Bridge than rock A. The number of seals hauled out on rocks B and E was not significantly different between years while the number hauled out on rocks D and F was greater during the fall of 2000 and 2001 than 1998 and 1999. For a more detailed discussion on the distribution of harbor seals during the work and non-work periods and levels of impact by various natural and anthropogenic disturbance sources, see Green et al. (2002) which is available upon request (see **ADDRESSES**).

Whether California sea lions will react to construction noise and move away from the rocks during construction activities is unknown. Sea lions are generally thought to be more tolerant of human activities than harbor seals and are, therefore, less likely to be affected.

Potential Effects on Habitat

Short-term impacts of the activities are expected to result in a temporary reduction in utilization of the Castro Rocks haulout site while work is in progress or until seals acclimate to the disturbance. This will not likely result in any permanent reduction in the number of seals at Castro Rocks. The abandonment of Castro Rocks as a harbor seal haulout and rookery is not anticipated since existing traffic noise from the Bridge, commercial activities at the Chevron Long Wharf used for off-loading crude oil, and considerable recreational boating and commercial shipping that currently occur within the area have not caused long-term abandonment. In addition, mitigation measures and work restrictions are designed to preclude abandonment.

Therefore, as described in detail in CALTRANS (1996), other than the potential short-term abandonment by harbor seals of part or all of Castro Rocks during retrofit construction, no impact on the habitat or food sources of marine mammals are likely from this construction project.

Mitigation

Several mitigation measures to reduce the potential for general noise have been implemented by CALTRANS as part of their activity. General restrictions include: with the exception of the Concrete Trestle Section, no piles will be driven (i.e., no repetitive pounding of piles) on the Bridge between 9 p.m. and 7 a.m.; an imposition of a construction noise limit of 86 dBA at 50 ft (15 m) between 9 p.m. and 7 a.m.; and, a limitation on construction noise levels for 24 hrs/day in the vicinity of Castro Rocks during the pupping/molting restriction period.

To minimize potential harassment of marine mammals, in the current and previous authorizations NMFS required CALTRANS to comply with the following mitigation measures: (1) A February 15 through July 31 restriction on work in the water south of the Bridge center line and retrofit work on the Bridge substructure, towers, superstructure, piers, and pilings from piers 52 through 57; (2) no watercraft will be deployed by CALTRANS employees or contractors, during the

year within the Work/Boat Exclusion Zone (W/BEZ) located between piers 52 and 57, except for when construction equipment is required for seismic retrofitting of piers 52 through 57; and (3) minimize vessel traffic to the greatest extent practicable in the exclusion zone when conducting construction activities between piers 52 and 57. The boundary of the current W/BEZ is rectangular in shape (1700 ft (518 m) by 800 ft (244 m)) and completely encloses Castro Rocks and piers 52 through 57, inclusive. The northern boundary of the W/BEZ is located 300 ft (91 m) from the most northern tip of Castro Rocks, and the southern boundary is located 300 ft (91 m) from the most southern tip of Castro Rocks. The eastern boundary is currently located 300 ft (91 m) from the most eastern tip of Castro Rocks, and the western boundary is currently located 300 ft (91 m) from the most western tip of Castro Rocks. This W/BEZ is restricted as a controlled access area and is marked off with buoys and warning signs for the entire year.

For this proposed IHA, CALTRANS has requested, among other things, that the W/BEZ be modified from its current location so that the eastern boundary is shifted from 100 ft (30.5 m) east of Pier 57 to 100 ft (30.5 m) west of Pier 57. This will maintain a 400–ft (122–m) ''buffer,'' as opposed to the existing 600–ft (183–m) buffer, between the work at Pier 57 and ''A'' rock. CALTRANS believes that this modification is reasonable based on observed seal behavior during the construction within the W/BEZ that harbor seals adjusted their location preference on Castro Rocks by moving westerly to rocks further from the construction (see discussion previously in this document). However, CALTRANS notes that there has not been a statistically significant change in the total numbers of animals that utilize the Castro Rocks haulout.

In addition to shifting the W/BEZ, CALTRANS is requesting that the period in which work is allowed in the vicinity of Castro Rocks be modified from February 15th to March 1st. CALTRANS is requesting this modification due to unforseen circumstances affecting the ability of the contractor to the seismic retrofit work on Pier 57. This will allow the contractor to complete the work this coming season and to stay under budget.

The current Closure Period (February 15–July 31) was designed to encompass the entire harbor seals pupping and breeding seasons and nearly the entire molting season at Castro Rocks. Thus, the Closure Period includes the entire pupping season at Castro Rocks and a substantial pre-pupping period when females are moving into pupping areas (62 FR 67045, December 23, 1997). Because moving the Closure Period from February 15th to March 1st would still provide a two-week window prior to the onset of successful pupping (March 15th), and because NMFS does not find scientific evidence indicating that female harbor seals need a ''quiet period'' from general noise in order to pup successfully, NMFS has preliminarily determined that shifting the Closure Period from February 15th to March 1st would not have a significant impact on harbor seal pupping.

Finally, CALTRANS has requested that the period in which work is allowed in the vicinity of Castro Rocks be modified from August 1st to a new date of July 16th. As mentioned in previous documents, newborn harbor seal pups are able to swim immediately after birth (Zeiner et al., 1990) and pups are weaned by the first week of June. Therefore terminating the Closure Period on July 16th should not affect pup survival. Under the current and previous authorizations, the July 31st ending date for the Closure Period was established to protect harbor seals during the molting season. However, those documents also noted that it is likely that harbor seals evolved adaptive mechanisms to deal with exposure to the water during the molt. For example, on some harbor seal haul-outs (such as Castro Rocks) during the molting season seals must enter the water once or even twice a day due to tidal fluctuations limiting access to the haul-out. Also, since harbor seals lose hair in patches during the molt, they are never completely hairless and would not be as vulnerable to heat loss in the water during this period compared to other seals (e.g., elephant seals) that lose all their hair at one time. Finally, if the levels of harbor seal disturbance during the molt are relatively high, seals are likely to utilize other local haul-out sites during the molt (DeLong, R., pers. commun. 1997; Hanan, D., pers. commun. 1997; Harvey, J., pers. commun. 1997). Hanan (1996) found that although harbor seals tagged at an isolated southern California haul-out tended to exhibit site fidelity during the molt, some seals were observed molting at other nearby haul-outs. Based on these reasons, NMFS has preliminarily determined that changing the last day of the Closure Period to July 15th should not significantly affect harbor seals in general or molting seals at Castro Rocks in particular.

Monitoring

NMFS will require CALTRANS to continue to monitor the impact of seismic retrofit construction activities on harbor seals at Castro Rocks. Monitoring will be conducted by one or more NMFS-approved monitors. CALTRANS is to monitor at least one additional harbor seal haulout within San Francisco Bay to evaluate whether harbor seals use alternative haulout areas as a result of seismic retrofit disturbance at Castro Rocks.

The monitoring protocol will be divided into the Work Period Phase (app. July 16 through February 28) and the Closure Period Phase (app. March 1 through July 15). During the Work Period Phase and Closure Period Phase, the monitor(s) will conduct observations of seal behavior at least 3 days/week for approximately one tidal cycle each day at Castro Rocks. The following data will be recorded: (1) Number of seals and sea lions on site; (2) date; (3) time; (4) tidal height; (5) number of adults, subadults, and pups; (6) number of individuals with red pelage; (7) number of females and males; (8) number of molting seals; and (9) details of any observed disturbances. Concurrently, the monitor(s) will record general construction activity, location, duration, and noise levels. At least 2 nights/week, the monitor will conduct a harbor seal census after midnight at Castro Rocks. In addition, during the Work Period Phase and prior to any construction between piers 52 and 57, inclusive, the monitor(s) will conduct baseline observations of seal behavior at Castro Rocks and at the alternative site(s) once a day for a period of 5 consecutive days immediately before the initiation of construction in the area to establish pre-construction behavioral patterns. During the Work Period and Closure Period Phases, the monitor(s) will conduct observations of seal behavior and collect appropriate data at the alternative Bay harbor seal haulout at least 3 days/week (Work Period) and 2 days/week (Closure Period), during a low tide.

In addition, NMFS will require that, immediately following the completion of the seismic retrofit construction of the Bridge, the monitor(s) will conduct observations of seal behavior, at Castro Rocks, at least 5 days/week for approximately 1 tidal cycle (high tide to high tide) each day, for one week/month during the months of April, July, October, and January. At least 2 nights/week during this same period, the monitor will conduct an additional harbor seal census after midnight.

Reporting

Under the current and previous IHAs, CALTRANS has provided monitoring reports (Green et al. (2001, 2002). The findings from these reports have been summarized previously in this document.

CALTRANS will provide weekly reports to the Southwest Regional Administrator (Regional Administrator), NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of harbor seals that may have been disturbed as a result of seismic retrofit construction activities. These reports will provide dates, time, tidal height, maximum number of harbor seals ashore, number of adults, sub-adults and pups, number of females/males, number of harbor seals with a red pelage, and any observed disturbances. A description of retrofit activities at the time of observation and any sound pressure levels measurements made at the haulout will also be provided. A draft interim report must be submitted to NMFS by April 30, 2003.

A draft final report must be submitted to the Regional Administrator within 90 days after the expiration of this IHA. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

CALTRANS will provide NMFS with a follow-up report on the post-construction monitoring activities within 18 months of project completion in order to evaluate whether haulout patterns are similar to the pre-retrofit haul-out patterns at Castro Rocks.

National Environmental Policy Act

In conjunction with the promulgation of regulations implementing section 101(a)(5)(D) of the MMPA, NMFS completed an EA on May 9, 1995, that addressed the impacts on the human environment from issuance of IHAs and the alternatives to that action. NMFS' analysis resulted in a Finding of No Significant Impact. In addition, NMFS prepared an EA in 1997 that concluded that the impacts of CALTRANS' seismic retrofit construction of the Bridge will not have a significant impact on the human environment. Accordingly, this proposed action has not changed significantly from the 1997 action, it is categorical excluded from further NEPA analysis and, therefore, a new EA will not be prepared. A copy of these two relevant EAs are available (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of the seismic retrofit construction of the Bridge, as described in this document, should result, at worst, in the temporary modification in behavior by harbor seals and, possibly, by some California sea lions. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Proposed Authorization

NMFS proposes to renew an IHA to CALTRANS for the potential harassment of small numbers of harbor seals and California sea lions incidental to seismic retrofit construction of the Bridge, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals and possibly California sea lions and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: July 18, 2002.

David Cottingham

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–18742 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in India

July 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59577, published on November 29, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 24, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	103,112,557 square meters.
317	35,321,538 square meters.
335/635	1,101,190 dozen.
340/640	3,010,998 dozen.

Category	Adjusted twelve-month limit [1]
341	6,445,869 dozen of which not more than 3,742,222 dozen shall be in Category 341–Y [2].
342/642	2,229,915 dozen.
345	329,563 dozen.
641	2,221,817 dozen.
647/648	1,252,018 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–18708 Filed 7–23–02 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

July 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing, special shift, special swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63030, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 24, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels within the fabric group	
219	48,388,504 square meters.
620	11,193,064 square meters.
Other specific limits	
338/339	2,025,312 dozen.
340/640	1,972,271 dozen.
341/641	2,506,992 dozen of which not more than 924,369 dozen shall be in Category 341.
347/348	967,441 dozen.
351/651	446,713 dozen.
634/635	1,187,343 dozen.
645/646	483,399 dozen.
647/648	2,455,021 dozen of which not more than 1,794,889 dozen shall be in Category 647–K [2] and not more than 1,794,889 dozen shall be in Category 648–K [3]

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20,.1060 and 6113.00.9044.

[3] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–18709 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

July 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Issuing a directive to the Commissioner of Customs increasing the limit for Cetegories 352/652 for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63035, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 24, 2002, you are directed to increase the current limit for Categories 352/652 to 2,231,911 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–18707 Filed 7–23–02; 8:45 a.m.

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Short Supply Petition under the North American Free Trade Agreement (NAFTA)

July 17, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a request for modification of the NAFTA rules of origin for certain acrylic yarn made from synthetic acid-dyeable acrylic tow.

SUMMARY: On July 2, 2002, the Chairman of CITA received a request from National Spinning Company, Incorporated (New York, NY) alleging that certain synthetic acid-dyeable acrylic tow, classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 5501.30, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the NAFTA rule of origin for acrylic yarn classified under HTSUS 5509.31 should be modified to allow the use of non-North American tow of the type described above.

The President may proclaim a modification to the NAFTA rules of origin only after reaching agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether the acrylic tow described above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by August 23, 2002 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND:

Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA countries on such a modification.

On July 2,2002 the Chairman of CITA received a request from National Spinning Company, Incorporated (New York, NY) alleging that certain synthetic acid-dyeable acrylic tow, classified under HTSUS subheading 5501.30, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the NAFTA rule of origin for acrylic yarn classified under HTSUS 5509.31 should be modified to allow the use of non-North American tow of the type described above.

CITA is soliciting public comments regarding this request, particularly with respect to whether the acid-dyeable acrylic tow, classified in HTSUS heading 5501.30, can be supplied by the domestic industry in commercial quantities in a timely manner. The request states that National Spinning Company, Incorporated has contacted known North American suppliers of acrylic tow and was unable to locate a supplier who produced acid-dyeable acrylic tow in commercial quantities in a timely manner. Comments must be received no later than August 23, 2002. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that the acid-dyeable acrylic tow can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the tow stating that it produces the tow that is in the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA

[1] The limit has not been adjusted to account for any imports exported after December 31, 2001.

will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–18555 Filed 7–23–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Wednesday, July 31, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Contract Market Designation.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 02–18795 Filed 7–22–02; 3:58 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the general availability of exclusive or partially exclusive licenses under the following pending patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status. The subject patent application of this notice is U.S. Patent Application Serial No. 06/795,843 entitled ''Pulse Sampled Optical Fiber Hydrophone'', filed September 5, 1985.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Theresa A. Baus, Office of Technology Transfer, Naval Undersea Warfare Center, 1176 Howell St., Newport, RI 02841, telephone (401) 832–8728 or e-mail at *bausta@npt.nuwc.navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: July 12, 2002.

R.E. Vincent, II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–18654 Filed 7–23–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than July 26, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. This notice is being submitted to the **Federal Register** less than 15 days before the date of the meeting due to administrative delays.

DATES: August 1–August 3, 2002.

TIMES: *August 1:* Assessment Development Committee: Closed Session 10 a.m. to 3 p.m.; Executive Committee Meeting: Open Session 4:30 p.m.–6 p.m.; Closed Session 6 p.m. to 7:30 p.m.

August 2: Full Board Meeting: Open Session 9 a.m.–12:30 p.m.; Committee Meetings: Assessment Development Committee 10:30 a.m.–12:30 p.m.; Committee on Standards, Design and Methodology, 10:30 a.m.–12:30 p.m.; Reporting and Dissemination Committee, 10:30 a.m.–12:30 p.m.; Full Board—Closed Meeting 12:30 p.m.–1:30 p.m.; Open Meeting 1:30 p.m.–2:45 p.m.; Closed Meeting, 3 p.m.–4:30 p.m.

August 3: Full Board Meeting: Closed Session 8:45 a.m.–9:30 a.m.; Full Board Open Meeting, 9:30 a.m.–12 p.m.

LOCATION: The Four Seasons Hotel, 2800 Pennsylvania Avenue NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

On August 2, 2002 the full Board will convene in open session from 9 a.m.–10:30 a.m. The Board will approve the agenda; receive the Executive Director's report and a NAEP Update from the Deputy Commissioner of NCES, Gary Phillips. The Board will then preview proposed policies on the NAEP program. From 10:30 a.m. to 12:30 p.m., the Board's standing committees—the Assessment Development Committee, the Committee on Standards, Design, and Methodology, and the Reporting and Dissemination Committee will meet in open session.

The full Board will reconvene in closed session on August 2, 2002 from 12:30 p.m.–1:30 p.m. to receive a briefing on market basket reporting. This briefing will include confidential information on NAEP test items. Disclosure of the specific test items would significantly frustrate implementation of the NAEP program,

and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The full Board will reconvene in open session on August 2, from 1:30 p.m. to 2:45 p.m. to receive final recommendations on the NAEP Economics Framework project and to receive a report on NAEP/NAGB reauthorization. From 3 p.m. to 4:30 p.m. the full Board will meet in closed session to review and discuss test items from the Main NAEP Mathematics Assessment. Disclosure of the specific test items for the NAEP Mathematics Assessment would significantly frustrate implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The full Board will meet in partially closed session on August 3, 2002 from 8:45 a.m. to 9:30 a.m. to receive an update on nominations for Board membership. This discussion pertains solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C.

The full Board will meet in open session on August 3, 2002 from 9:30 a.m. to 12 p.m. The Board will receive a presentation on NAEP data on the Internet from 9:30 a.m. to 10 a.m. The Board will then hear and take action on Committee reports from 10 a.m. to 11:45 a.m. Subsequently, from 11:45 a.m. to 12 noon, the Board will elect the Board Vice Chair. The August 3, 2002 session of the Board meeting will adjourn at 12 noon.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time.

Dated: July 19, 2002.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 02–18673 Filed 7–23–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for the Approval of Public Postsecondary Vocational Education, and State Agencies for the Approval of Nurse Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education (The Advisory Committee).

What Is the Purpose of This Notice?

The purpose of this notice is to invite written comments on accrediting agencies and State approval agencies whose applications to the Secretary for initial or renewed recognition or whose interim reports will be reviewed at the Advisory Committee meeting to be held on December 2–4, 2002.

Where Should I Submit My Comments?

Please submit your written comments by September 9, 2002 to Carol Griffiths, Chief, Accrediting Agency Evaluation, Accreditation and State Liaison. You may contact her at the U.S. Department of Education, room 7105, MS 8509, 1990 K Street, NW., Washington, DC 20006, telephone: (202) 219–7011. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. One of the purposes of the Advisory Committee is to advise the Secretary of Education on the recognition of accrediting agencies and State approval agencies.

Will This Be My Only Opportunity To Submit Written Comments?

Yes, this notice announces the only opportunity you will have to submit written comments. However, a subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests to make oral presentations before the Advisory Committee on the agencies that the Committee will review. That notice, however, does not offer a second opportunity to submit written comment.

What Happens to the Comments That I Submit?

We will review your comments, in response to this notice, as part of our evaluation of the agencies' compliance with the Secretary's Criteria for Recognition of Accrediting Agencies and State Approval Agencies. The Criteria are regulations found in 34 CFR part 602 (for accrediting agencies) and in 34 CFR part 603 (for State approval agencies).

We will also include your comments with the staff analyses we present to the Advisory Committee at its December 2002 meeting. Therefore, in order for us to give full consideration to your comments, it is important that we receive them by September 9, 2002. In all instances, your comments about agencies seeking initial or continued recognition must relate to the Criteria for Recognition. In addition, your comments for any agency whose interim report is scheduled for review must relate to the issues raised and the Criteria for Recognition cited in the Secretary's letter that requested the interim report.

What Happens to Comments Received After the Deadline?

We will review any comments received after the deadline. If such comments, upon investigation, reveal that the accrediting agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate.

What Agencies Will the Advisory Committee Review at the Meeting?

The Secretary of Education recognizes accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education if the Secretary determines that they meet the Criteria for Recognition. Recognition means that the Secretary considers the agency to be a reliable authority as to the quality of education offered by institutions or programs that are encompassed within the scope of recognition he grants to the agency. The following agencies will be reviewed during the December 2002 meeting of the Advisory Committee:

Nationally Recognized Accredity Agencies

Petition for Initial Recognition

1. Commission on English Language Program Accreditation (Requested scope of recognition: the accreditation of postsecondary English language programs and institutions in the United States)

2. Teacher Education Accreditation Council (Requested scope of recognition: the accreditation throughout the United States of professional education programs in institutions offering baccalaureate and

graduate degrees for the preparation of teachers K–12)

Petitions for Renewal of Recognition

1. Accrediting Council for Continuing Education and Training (Current scope of recognition: the accreditation of institutions of higher education throughout the United States that offer non-collegiate continuing education programs.) (Requested scope of recognition: the accreditation of institutions of higher education throughout the United States that offer non-collegiate continuing education programs, including programs offered via distance education.)

2. American Optometric Association, Accreditation Council on Optometric Education (Current scope of recognition: the accreditation in the United States of professional optometric degree programs, optometric technician (associate degree) programs, and optometric residency programs and for the preaccreditation categories of Preliminary Approval and Reasonable Assurance for professional optometric degree programs and Candidacy Pending for optometric residency programs in Veterans' Administration facilities.)

3. American Speech-Language-Hearing Association, Council on Academic Accreditation (Current scope of recognition: the accreditation and preaccreditation (Candidacy status) throughout the United States of Master's and doctoral-level degree programs in speech-language pathology and/or audiology.) (Requested scope of recognition: the accreditation and preaccreditation (''Accreditation Candidate'') throughout the United States of entry-level graduate education programs at the master's or doctoral level leading to the first professional or academic degree in audiology and/or speech-language pathology and the accreditation of these programs offered via distance education.)

4. Midwifery Education Accreditation Council (Current scope of recognition: the accreditation throughout the United States of direct-entry midwifery educational institutions and programs conferring degrees and certificates.) (Requested scope of recognition: the preaccreditation and accreditation throughout the United States of direct-entry midwifery educational institutions and programs conferring degrees and certificates, including the accreditation of programs offered via distance education.)

5. National Association of Schools of Art and Design, Commission on Accreditation (Current scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in art and design and art and design-related disciplines.) (Requested scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in art and design and art and design-related disciplines, including programs offered via distance education.)

6. National Association of Schools of Dance, Commission on Accreditation (Current scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in dance and dance-related disciplines.) (Requested scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in dance and dance-related disciplines, including programs offered via distance education.)

7. National Association of Schools of Music, Commission on Accreditation, Commission on Non-Degree-Granting Accreditation, Commission on Community/Junior College Accreditation (Current scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in music and music-related disciplines, including community/junior colleges and independent degree-granting and non-degree-granting institutions.) (Requested scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in music and music-related disciplines, including community/junior colleges and independent degree-granting and non-degree-granting institutions and programs offered via distance education.)

8. National Association of Schools of Theatre, Commission on Accreditation (Current scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in theatre and theatre-related disciplines.) (Requested scope of recognition: the accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in theatre and theatre-related disciplines, including programs offered via distance education.)

9. New England Association of Schools and Colleges, Commission on Institutions of Higher Education (Current scope of recognition: the accreditation and preaccreditation (''Candidacy status'') of institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont that award bachelor's, master's, and/or doctoral degrees and associate degree-granting institutions in those states that include degrees in liberal arts or general studies among their offerings. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.) (Requested scope of recognition: the accreditation and preaccreditation (''Candidacy status'') of institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont that award bachelor's, master's, and/or doctoral degrees and associate degree-granting institutions in those states that include degrees in liberal arts or general studies among their offerings, and the accreditation of programs offered via distance education within these institutions. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.)

10. New England Association of Schools and Colleges, Commission on Technical and Career Institutions (Current scope of recognition: the accreditation and preaccreditation (''Candidate status'') of secondary institutions with vocational-technical programs at the 13th and 14th grade level, postsecondary institutions, and institutions of higher education that provide primarily vocational/technical education at the certificate, associate, and baccalaureate degree levels in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.) (Requested scope of recognition: the accreditation and preaccreditation (''Candidate status'') of secondary institutions with vocational-technical programs at the 13th and 14th grade level, postsecondary institutions, and institutions of higher education that provide primarily vocational/technical education at the certificate, associate,

and baccalaureate degree levels in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, and the accreditation of programs offered via distance education within these institutions. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.)

11. North Central Association of Colleges and Schools, The Higher Learning Commission (Current scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'') of degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, Wyoming, including schools of the Navajo Nation.) (Requested scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'') of degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, Wyoming, including schools of the Navajo Nation, and the accreditation of programs offered via distance education within these institutions.)

12. Northwest Association of Schools and of Colleges and Universities, Commission on Colleges and Universities (Current scope of recognition: the accreditation and preaccreditation (''Candidacy status'') of postsecondary educational institutions in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington.) (Requested scope of recognition: the accreditation and preaccreditation (''Candidacy status'') of postsecondary educational institutions in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington, and the accreditation of programs offered via distance education within these institutions.)

13. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges (Current scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'') of community and junior colleges located in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands.) (Requested scope of recognition: the accreditation and preaccreditation (''Candidate for Accreditation'') of community and junior colleges located in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, and the accreditation of programs offered via distance education at these colleges.)

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency.)

1. Accrediting Council for Independent Colleges and Schools.

2. American College of Nurse-Midwives, Division of Accreditation.

3. American Council on Pharmaceutical Education.

4. Commission on Opticianry Accreditation.

5. Joint Review Committee on Education in Radiologic Technology.

6. Joint Review Committee on Educational Programs in Nuclear Medicine Technology.

7. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities:

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petition for Renewal of Recognition

1. Oklahoma Board of Career and Technology Education (Current scope of recognition: the approval of public postsecondary vocational education offered at institutions in the State of Oklahoma that are not under the jurisdiction of the Oklahoma State Regents for Higher Education.)

2. Utah State Board for Applied Technology Education:

State Agencies Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. Iowa Board of Nursing

2. Maryland Board of Nursing

Federal Agency Seeking Degree-Granting Authority

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Master's Degree-Granting Authority

1. U.S. Marine Corps University, Quantico, VA (request to award a master's degree of Operational Studies)

Where Can I Inspect Petitions and Third-Party Comments Before and After the Meeting?

All petitions and those third-party comments received in advance of the meeting, will be available for public inspection and copying at the U.S. Department of Education, room 7105, MS 8509, 1990 K Street, NW., Washington, DC 20006, telephone (202) 219–7011 between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, until November 8, 2002. They will be available again after the December 2–4 Advisory Committee meeting. An appointment must be made in advance of such inspection or copying.

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Authority: 5 U.S.C. Appendix 2.

Dated: July 18, 2002.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 02–18663 Filed 7–23–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–340–001]

ANR Pipeline Company; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 12, 2002, ANR Pipeline Company (ANR) filed revised tariff sheets in compliance with the Commission's June 13, 2002 Order in the above-referenced docket. *ANR Pipeline Company,* 99 FERC ¶ 61,310.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18682 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–254–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 15, 2002, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective July 1, 2002:

Substitute Fifth Revised Sheet No. 575
Substitute Fifth Revised Sheet No. 585
Substitute Fourth Revised Sheet No. 581

Columbia Gas states that on May 1, 2002, it made a filing with the Commission to comply with Order No. 587–N (98 FERC ¶ 61,257 (2002)). The order amended the Commission's regulations to require pipelines to permit releasing shippers to recall released capacity and renominate such recalled capacity at each nomination opportunity. On June 28, 2002, the Commission approved the tariff sheets filed on May 1, 2002, but directed Columbia to make minor modifications. The tariff sheets in the instant filing reflect the changes mandated by the Commission.

Columbia states that copies of its filing have been served on Columbia's firm customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 25, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18681 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–406–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

July 18, 2002.

Take notice that on July 12, 2002, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP02–406–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations (18 CFR 157.205 and 157.216) under the Natural Gas Act (NGA) for authorization to abandon delivery point facilities for service to two end-users in Ohio, under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.fed.us/online/htm* (call 202–208–2222 for assistance).

Columbia requests authorization to abandon by removal facilities installed to provide natural gas service to two residential end-use customers of Columbia Gas of Ohio (COH) located in Licking and Knox Counties, Ohio. It is stated that Columbia was authorized to own and operate the facilities pursuant to Commission authorization in Docket No. CP71–132. Columbia states that the taps are no longer needed because the service to the two customers is now being provided through distribution lines belonging to COH.

Any questions regarding the application may be directed to Fredric J. George, Senior Attorney, at (304) 357–2359.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the

time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA. Comments and protests may be filed electronically in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18684 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–057]

Columbia Gulf Transmission Company; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 15, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 316, to become effective July 5, 2002.

Columbia Gulf states on June 7, 2002, it made a filing with the Commission seeking approval of a Rate Schedule FTS–1 negotiated rate agreement with Reliant Energy Services, Inc. in Docket No. RP96–389–054. On July 5, 2002, the Commission issued an order on the filing, approving the service agreement effective November 1, 2002, and directing Columbia Gulf to file a tariff sheet identifying the agreement as a non-conforming agreement in compliance with Section 154.112(b) of the Commission's regulations. The instant filing is being made to comply with Section 154.112(b) and reference the non-conforming service agreement in its Volume No. 1 tariff.

Columbia Gulf states that copies of its filing has been mailed to each of the parties listed on the service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18683 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2317–000]

Delano Energy Company, Inc.; Notice of Filing

July 18, 2002.

Take notice that on July 1, 2002, Delano Energy Company, Inc., (Delano) filed pursuant to section 205 of the Federal Power Act is Interim Energy Purchase Agreement with the California Department of Water Resources, dated at of March 29, 2002, and it Interim Energy Purchase Agreement the California Department of Water Resources, dated as of December 2001.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: July 29, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18685 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–319–001 and RP00–598–001]

Discovery Gas Transmission LLC; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 15, 2002, Discovery Gas Transmission LLC (Discovery) tendered for filing in its FERC Gas Tariff, Original Volume No. 1, the following *pro forma* tariffs sheets in compliance with the Commission's Order on Compliance with Order Nos. 637, 587–G and 587–L, issued May 1, 2002:

First Revised Sheet No. 101
Original Sheet No. 136A
Third Revised Sheet No. 146
Third Revised Sheet No. 151
Original Sheet No. 197
Second Revised Sheet No. 130
Second Revised Sheet No. 145
Second Revised Sheet No. 150
Sixth Revised Sheet No. 196
Reserved Sheets Nos. 198–199

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 25, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for

assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18687 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–48–001]

El Paso Electric Company; Notice of Application

July 18, 2002.

Take notice that on July 16, 2002, El Paso Electric Company (El Paso) amended its application requesting authorization to replace two outstanding series of Pollution Control Bonds with the following: (1) $37.1 million of Adjustable Tender Pollution Control Refunding Revenue Bonds, 1984 Series E, and (2) $33.3 million Adjustable Tender Pollution Control Refunding Revenue Bonds, 1994 Series A.

El Paso also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: July 26, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18677 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–190–004]

Kern River Gas Transmission Company; Notice of Correciton

July 18, 2002.

Take notice that on July 9, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing Second Revised Sheet No. 645 as part of its FERC Gas Tariff, Second Revised Volume No. 1.

Kern River states that the purpose of this filing is to correct a pagination error by submitting Second Revised Sheet No. 645 to replace the sheet that was incorrectly identified as First Revised Sheet No. 645 in this proceeding.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 25, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18680 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1398–001]

KeySpan-Ravenswood, Inc.; Notice of Filing

July 18, 2002.

Take notice that on July 2, 2002, KeySpan-Ravenswood, Inc., (Ravenswood) filed with the Federal Energy Regulatory Commission (Commission) changes to its market-based rate schedule to reflect the proposed internal reorganization involving a change in Ravenswood Inc.'s corporate form from a New York corporation to a New York limited liability corporation named KeySpan-Ravenswood LLC (the Transaction). The Commission issued an Order in the above-captioned proceeding on April 26, 2002 accepting the revised Rate Schedule.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: July 29, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18676 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–391–001 and RP00–575–001]

Mississippi Canyon Gas Pipeline, LLC; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 16, 2002 Mississippi Canyon Gas Pipeline, LLC (MCGP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Attachment A to the filing.

MCGP states that the purpose of this filing is to comply with the Commission's June 17, 2002 order on MCGP's Order No. 637 pro forma compliance filing. Pursuant to Ordering Paragraph (B) of that order, MCGP is not proposing an effective date for the revised tariff sheets at this time.

MCGP states that a copy of this filing has been served upon its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 25, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18679 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–235–001]

Northern Natural Gas Company; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 15, 2002, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet in compliance with the Commission's Order issued on June 28, 2002, in Docket No. RP02–235–000:

Substitute Fourth Revised Sheet No. 289

In the Order the Commission accepted Northern's filing, subject to Northern removing its proposal that it would notify replacement shippers of recalls received after 5 p.m. CCT by 9 a.m. CCT the next morning. Therefore, Northern is filing the above-referenced tariff sheet to remove this provision.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18689 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–5–041]

Northwest Pipeline Corporation; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 12, 2002, Northwest Pipeline Corporation (Northwest) tendered for filing a compliance filing in response to the Commission's June 12, 2002 order in this docket.

Northwest states that the purpose of this filing is to comply with the Commission's June 12, 2002 Order on Remand in Docket No. RP93–5–040. Northwest states that on April 3, 2000 it submitted revised rates and surcharges based on the 6.08 percent long-term growth projection as established by settlement of the parties and the median return on equity, which was accepted in a July 14, 2000 order. Northwest further states that on August 31, 2001 it filed a refund and surcharge offset report confirming its compliance with the Commission's July 14, 2000 order. The refund report was accepted by the Commission on December 5, 2001. Northwest believes that the April 3, 2000 compliance filing and the August 31, 2001 refund report satisfy the requirements of the June 12, 2002 order and requests the Commission to take whatever action it deems necessary to close this docket.

Northwest states that a copy of this filing has been served upon each person designated on the official service lists compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.

Deputy Secretary

[FR Doc. 02–18691 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–339–001]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 12, 2002, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Original Sheet No. 374F.02, with an effective date of July 1, 2002.

Transco states that the filing is made in compliance with the Commission's Order issued June 28, 2002 (June 28 Order) in the referenced docket, which addressed Transco's Motion for Extension of Time to comply with Order No. 587–N.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before July 25, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18690 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–585–002 and RP00–586–001]

Vector Pipeline L.P.; Notice of Compliance Filing

July 18, 2002.

Take notice that on July 12, 2002, Vector Pipeline L.P. (Vector), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of August 1, 2002.

Vector states that the filing is being made in compliance with the requirements in the Commission's June 17, 2002 order.

Vector states that copies of the filing has been served on each affected customers, interested state commissions, and all persons on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 25, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18688 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–62–048, *et al.*]

ISO New England Inc., *et al.*; Electric Rate and Corporate Regulation Filings

July 17, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New England Power Pool

[Docket No. ER98–3853–015]

Take notice that on July 12, 2002, ISO New England Inc. submitted a corrected compliance filing revising an earlier compliance filing made by the ISO on July 9, 2002 in the above-referenced dockets.

Comment Date: August 2, 2002.

2. Great Bay Power Corporation; Little Bay Power Corporation

[Docket Nos. ER98–3470–001 and ER99–3050–001]

Take notice that on July 12, 2002, Great Bay Power Corporation and Little Bay Power Corporation tendered for filing their triennial market power updates in support of authorization to engage in wholesale sales of electric energy and market-based rates.

Comment Date: August 2, 2002.

3. Tenaska Gateway Partners, Ltd.

[Docket No. ER99–2992–001]

Take notice that on July 15, 2002, Tenaska Gateway Partners, Ltd., (Tenaska Gateway) submitted for filing with the Federal Energy Regulatory Commission (Commission) its triennial updated market analysis in accordance with Appendix B of the Commission's Order in Front Range Associates, LLC.

Questions concerning this filing may be directed to counsel for Tenaska Gateway, Neil L. Levy, Kirkland & Ellis, 655 Fifteenth Street, NW, Suite 1200, Washington, DC 20005, Phone (202) 879–5116, Fax (202) 879–5200, e-mail *Neil_Levy@dc.kirkland.com*.

Comment Date: August 5, 2002.

4. Alcoa Power Generating Inc.

[Docket No. ER00–1372–001]

Take notice that on July 15, 2002, Alcoa Power Generating Inc. (APGI) tendered for filing its triennial market power update in support of authorization to engage in wholesale sales of electric energy at market based prices.

Comment Date: August 5, 2002.

5. Geysers Power Company, LLC

[Docket No. ER01–812–002]

Take notice that on July 11, 2002, Geysers Power Company, LLC filed a refund report in compliance with the Commission's order in this proceeding dated June 12, 2002.

Comment Date: August 1, 2002.

6. Nevada Power Company

[Docket Nos. ER01–2754–004, ER01–2755–004, ER01–2758–004, and ER01–2759–004 (Not Consolidated)]

Take notice that on July 12, 2002, Nevada Power Company (Nevada Power) filed, pursuant to section 205 of the Federal Power Act and the Federal Energy Regulatory Commission's (Commission) Order dated June 12, 2002, in the above-referenced proceedings, transmission service agreements that have been revised in accordance with the settlement approved by the Commission in its June 12, 2002 Order. Also included in the same filing is a Notice of Termination, filed by Nevada Power pursuant to section 35.15 of the Commission's Regulations, of Service Agreement No. 95 between Nevada Power and Calpine Corporation. Nevada Power requests that this agreement be terminated as of June 12, 2002, which is the date that the Commission accepted the settlement providing for the termination of the agreement.

Comment Date: August 2, 2002.

7. Garnet Energy LLC

[Docket No. ER02–1119–002]

Take notice that on July 11, 2002, Garnet Energy LLC (Garnet) filed a Compliance Filing of Supply Margin Assessment with the Federal Regulatory Commission (the Commission), regarding the Application for Market-Based Rate Authority filed February 26, 2002, seeking acceptance of Garnet's FERC Rate Schedule No. 1 and the granting of certain blanket approvals, including the authority to sell energy and capacity at market-based rates and the waiver of certain Commission regulations. The filing was submitted in accordance with the letter order dated April 22, 2002.

Comment Date: August 1, 2002.

8. American Electric Power Service Corporation

[Docket No. ER02–1575–001]

Take notice that on July 12, 2002, American Electric Power Service Corporation submitted for filing an Amended Interconnection and Operation Agreement between Appalachian Power Company (APCo) and Allegheny Energy Supply Company, LLC, in compliance with the Commission's June 13, 2002 Order Conditionally Accepting Interconnection Agreement for Filing and Ordering Compliance Filing in the above-referenced docket. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6, effective June 15, 2000.

APCo requests an effective date of June 16, 2002. Copies of APCo's filing have been served upon Allegheny Energy Supply Company, LLC and upon Virginia State Corporation Commission.

Comment Date: August 2, 2002.

9. Southeast Chicago Energy Project, LLC

[Docket No. ER02–2017–001]

Take notice that on July 12, 2002, Southeast Chicago Energy Project, LLC (Southeast Chicago) filed supplemental information requested by Federal Energy Regulatory Commission.

Comment Date: August 2, 2002.

10. Entergy Services, Inc.

[Docket No. ER02–2123–001]

Take notice that on July 11, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively Entergy), tendered for filing fully executed copies of the Network Integration Transmission Service Agreement between the Entergy Operating Companies and the City of North Little Rock, Arkansas (the City), and the Network Operating Agreement between Entergy and the City, which had been previously submitted for filing in this docket.

Comment Date: August 1, 2002.

11. Consolidated Edison Company Of New York, Inc. (Complainant)

[Docket No. ER02–2126–002]

Take notice that on July 12, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing in the captioned proceeding a revised unexecuted Interconnection Agreement (Agreement) between Con Edison and PSEG Power In-City I, LLC (PSEG Power).

Con Edison requested that the revised Agreement be allowed to become effective September 1, 2002. Con Edison states that copies of the filing were served upon PSEG Power, the New York Independent System Operator, and the New York Public Service Commission.

Comment Date: August 2, 2002.

12. Lake Road Generating Company, L.P.

[Docket No. ER02–2130–001]

Take notice that on July 15, 2002, Lake Road Generating Company, L.P., (Lake Road) filed with the Federal Energy Regulatory Commission (Commission) its Electric Purchase/Sale Agreement with its affiliate PG&E Energy Trading—Power, L.P. (PGET) for wholesale sales.

Comment Date: August 5, 2002.

13. Zion Energy, LLC

[Docket No. ER02–2178–001]

Take notice that on July 11, 2002, Zion Energy, LLC (Zion) filed an amendment to its filing of June 27, 2002 of an executed power sales agreement under which it makes wholesale sales of electric energy to Calpine Energy Services, L.P. at market-based rates.

Comment Date: August 1, 2002.

14. Entergy Services, Inc.

[Docket No. ER02–2308–000]

Take notice that on July 11, 2002, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing an unexecuted Interconnection and Operating Agreement with Bayou Verret Energy, L.L.C. (Bayou Verret), and a Generator Imbalance Agreement with Bayou Verret.

Comment Date: August 1, 2002.

15. Whitewater Hill Wind Partners, LLC

[Docket No. ER02–2309–000]

Take notice that on July 11, 2002, Whitewater Hill Wind Partners, LLC (Whitewater) applied to the Federal Energy Regulatory Commission (Commission) for acceptance of Whitewater's Electric Tariff FERC No. 1; the granting of certain blanket approvals, including the authority to sell electric energy and capacity at market-based rates; and the waiver of certain Commission Regulations. Whitewater also submitted a long-term power purchase agreement between Whitewater and the California Department of Water Resources for acceptance as a service agreement under the market-based rate tariff.

Comment Date: August 1, 2002.

16. Crescent Ridge LLC

[Docket No. ER02–2310–000]

Take notice that on July 11, 2002, Crescent Ridge LLC (Crescent Ridge) applied to the Federal Energy Regulatory Commission (Commission) for acceptance of Crescent Ridge's Electric Tariff FERC No. 1; the granting of certain blanket approvals, including the authority to sell electric energy and capacity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: August 1, 2002.

17. Avista Corporation

[Docket No. ER02–2311–000]

Take notice that on July 12, 2002, Avista Corporation (Avista Corp)

tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Service Agreement under Avista Corp's FERC Electric Tariff First Revised Volume No. 10, with Seattle City Light with an assigned Service Agreement No. 293. The unexecuted Service Agreement will be replaced by an executed Service Agreement upon approval and receipt from the Seattle City Light.

Avista Corporation requests waiver of the prior notice requirements and requests an effective date of April 1, 2002. Notice has been sent to Seattle City Light.

Comment Date: August 2, 2002.

18. Aquila, Inc.

[Docket No. ER02–2312–000]

Take notice that on July 12, 2002, Aquila, Inc. (Aquila) tendered for filing Service Agreement No. 109 under Aquila's FERC Electric Tariff, Third Revised Volume No. 24, a short-term firm point-to-point transmission service agreement between Aquila's Missouri Public Service division and Keeney Creek Energy Associates, LLC.

UtiliCorp requests an effective date for the service agreement of July 15, 2002.

Comment Date: August 2, 2002.

19. Southwestern Electric Power Company

[Docket No. ER02–2313–000]

Take notice that on July 12, 2002, Southwestern Electric Power Company (SWEPCO) tendered for filing with the Federal Energy Regulatory Commission (Commission) proposed tariff changes in its Rate Schedule FERC No. 72, applicable to transmission service rendered to Arkansas Electric Cooperative Corporation (AECC) under the Flint Creek Power Plant Power Coordination, Interchange and Transmission Service Agreement (Flint Creek Agreement). SWEPCO has proposed decreased rates (calculated in accordance with the formula contained in the Flint Creek Agreement).

SWEPCO requests an effective date of July 1, 2001, and, accordingly, seeks waiver of the Commission's notice requirements. A copy of the filing was served on AECC and the Arkansas Public Service Commission.

Comment Date: August 2, 2002.

20. RockGen Energy LLC

[Docket No. ER02–2314–000]

Take notice that on July 12, 2002, RockGen Energy LLC (the Applicant) tendered for filing, under section 205 of the Federal Power Act, a rate schedule for system support services, whereby it would make available to American Transmission Company, an emergency redispatch service and a reactive power service.

Comment Date: August 2, 2002.

21. Public Service Company of New Mexico

[Docket No. ER02–2316–000]

Take notice that on July 15, 2002, Public Service Company of New Mexico (PNM) submitted for filing an executed Network Integration Transmission Service Agreement (NITSA) and an associated Network Operating Agreement (NOA) with PNM's Wholesale Bulk Power Marketing and Development Department (PNMM), dated June 30, 2002, under the terms of PNM's Open Access Transmission Tariff (OATT). The purpose of the NITSA and NOA is to facilitate delivery of electric service by PNMM to the City of Gallup, New Mexico (Gallup) under the Amended and Restated Agreement for Electric Service between PNMM and Gallup (the PNMM-Gallup Agreement). Service under the PNMM-Gallup Agreement commenced on July 1, 2002, and PNM is requesting that same date as the effective date for the NITSA and NOA. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

A copy of this filing has been served upon PNMM and informational copies have been sent to Gallup, the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: August 5, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18649 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–1–000 and CP02–1–001]

Southern Natural Gas Company; Notice of Availability of the Enivronmental Assessment for the Proposed South System Expansion II Project

July 18, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Southern Natural Gas Company (Southern) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of about 114 miles of pipeline loop and about 53,380 horsepower (hp) of mainline compression at various points along Southern's existing system in Louisiana, Mississippi, Alabama, and Georgia. Southern's South System Expansion II Project would provide a total of 329,891 thousand cubic feet per day (Mcfd) to serve the following customers: Southern Company Services, Inc. (97,950 Mcfd), Calpine Energy Services, L.P. (65,000 Mcfd), SCG Pipeline, Inc. (93,046 Mcfd), Effingham County Power, L.L.C. (58,766 Mcfd), City of Austell, Georgia (6,366 Mcfd), Morgan Stanley (5,400 Mcfd), Procter & Gamble (1,763 Mcfd), and Kimberly Clark (1,600 Mcfd). Southern proposes to construct the project in two phases, with in-service dates proposed for June 2003 (Phase I) and May 2004 (Phase II).

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission,

Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

• Label one copy of the comments for the attention of the Gas Branch 1, PJ11.1.

• Reference Docket Nos. CP02–1–000 and CP02–1–001; and

• Mail your comments so that they will be received in Washington, DC on or before August 19, 2002.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). [1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet Web site provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet Web site, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18675 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Extension of Time To Commence Project Construction and Soliciting Comments

July 18, 2002.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Extension of Time to Commence Project Construction.

b. *Project No.*: 7115–032.

c. *Date Filed*: June 17, 2002.

d. *Applicant*: Homestead Energy Resources, LLC.

e. *Name of Project*: George W. Andrews.

f. *Location*: At the Corps of Engineers' George W. Andrews Lock and Dam on the Chattahoochee River in Houston County, Alabama and Early County, Georgia.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Charles B. Mierek, Homestead Energy Resources, LLC., 5250 Clifton-Glendale Rd., Spartanburg, SC 29307–4618, (864) 579–4405.

i. *FERC Contact*: Regina Saizan, (202) 219–2673.

j. *Deadline for filing comments and or motions*: August 23, 2002.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Please include the Project Number (7115–032) on any comments or motions filed.

k. *Description of Application*: Pursuant to Sections 4.200'') and 4.202(a) of the Commission's regulations and Public Law No. 106–213, the applicant requests that its license be amended to extend the deadline for commencement of construction until September 21, 2004. The applicant also requests that completion of construction be extended by an additional four years from any extended commencement of construction date that the Commission grants.

l. *Location of the Application*: Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's Web site at *http://www/ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file

comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18678 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 18, 2002.

a. *Application Type*: Application to Amend License for the Riley-Jay-Livermore Project.

b. *Project No*: 2375–035.

c. *Date Filed*: May 31, 2002.

d. *Applicant*: International Paper Company.

e. *Name of Project*: Riley-Jay-Livermore Project.

f. *Location*: The project is located on the Androscoggin River at the junction of Franklin, Androscoggin, and Oxford Counties, Maine.

g. *Filed Pursuant to*: Federal Power Act, 16 USC 791(a)-825) and 799 and 801.

h. *Applicant Contact*: Mr. Michael Craft, International Paper Company, Androscoggin Mill, Riley Road, Jay, Maine 04239. Tel: (207) 897–3431.

I. *FERC Contact*: Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 219–3273 or by e-mail at *vedula.sarma@ferc.gov*.

j. *Deadline for filing comments and/or motions*: August 23, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2375–035) on any comments or motions filed.

k. *Description of Filing*: International Paper Company, proposes to revise the authorized capacity of the Livermore development of the project from 12.26 MW to 8.8 MW. The proposal would reduce the total hydraulic capacity of the Livermore development from 5,346 cfs to 3,966 cfs.

l. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18686 Filed 7–23–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0157; FRL–7190––2]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (FIFRA SAP) to consider and review corn rootworm plant-incorporated protectant insect resistance management and non-target insect issues.

DATES: The meeting will be held on August 27–29, 2002, from 8:30 a.m. to 5 p.m, eastern standard time.

For dates on requests to present oral comments, submission of written comments, or requests for special seating arrangements, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

For requests for nominations to serve as Ad-Hoc members of the FIFRA SAP for this meeting, see Unit II.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at Sheraton Crystal City Hotel, 1800 Jefferson Davis Hwy., Arlington, VA. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Requests to present oral comments, submission of written comments, or requests for special seating arrangements may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your request must identify docket ID number OPP–2002–0157 in the subject line on the first page of your response.

Send nominations to serve Ad-Hoc members of the FIFRA SAP for this meeting to the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, your request must identify docket ID number OPP–2002–0157 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, DFO, Office of Science Coordination and Policy (7202M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are, or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at: http://www.epa.gov/fedrgstr/.

A meeting agenda relevant to this meeting is now available. EPA's position paper, questions to FIFRA SAP, and FIFRA SAP composition (i.e., members and consultants) will be available as soon as possible, but no later than early August. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at: http://www.epa.gov/scipoly/sap.

2. *In person*. The Agency has established an official record for this meeting under docket ID number OPP–2002–0157. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other material information, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents.

The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How May I Participate in this Meeting?

You may submit requests to present oral comments, written comments, or requests for special seating arrangements through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0157 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments.

Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern standard time, August 22, 2002, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, the speaker should bring to the meeting 30 copies of the oral comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments*. Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted no later than noon, eastern standard time, August 22, 2002, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Submission of requests and written comments*—a. *By mail*. Submit your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Pennsylvania Ave., NW., Washington, DC 20460.

b. *In person or by courier*. Deliver your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

c. *Electronically*. You may submit your request or written comments electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 9.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket ID number OPP–2002–0157. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the FIFRA Scientific Advisory Panel

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel (SAP) prior to being made public or issued to a registrant. In accordance with FIFRA section 25(d), the SAP is to have an opportunity to comment on the health and environmental impact of such actions. The Panel also shall make comments, evaluations, and recommendations for operating

guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the Panel for staggered terms of 4 years, based on recommendations from the National Institute of Health and the National Science Foundation.

Section 104 of the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170 established the FQPA Science Review Board (SRB). These scientists shall be available to the SAP on an ad hoc basis to assist in reviews conducted by the Panel.

B. Purpose of the Meeting

The FIFRA SAP will meet to consider and review corn rootworm plant-incorporated protectant insect resistance management and non-target insect issues. Monsanto Company has requested a registration for the plant-incorporated protectant *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material (ZMIR13L) necessary for its production in corn. The Cry3Bb1 protein is intended to control corn rootworms (CRW, *Diabrotica* spp.), a coleopteran pest of corn. This registration application is limited to event MON 863 corn and descendant lines and varieties. Studies were submitted to support registration of the transformation event MON 863. CRW, a primary pest of corn in the United States, feeds on corn roots as larvae leading to a reduction in the plant's ability to absorb water and nutrients from soil and lodging. In areas where CRW is a pest (e.g., Corn Belt), significant financial losses are realized from a decrease in production and the cost of chemical insecticides used to control this insect pest. Significant acres of corn are treated annually to control CRW with organophosphate, carbamate and pyrethroid insecticides.

Monsanto has conducted experiments using Cry3Bb1 corn for the last 3 years (2000–2002) under Experimental Use Permits. This has allowed for data to be developed to support the company's application for a commercial registration under FIFRA. EPA has conducted a risk assessment based on the data submitted. The Agency is seeking the FIFRA SAP's review on their assessment of the non-target arthropod studies and the Bt degradation in soil studies.

In addition, Monsanto has submitted an insect resistance management plan (IRM) intended to be used for a 3-year interim period while further scientific studies are conducted to refine the plan based on actual commercial field experience. EPA has cooperated with researchers working with corn rootworm in its evaluation of the Monsanto proposed IRM plan. The Agency will also be seeking the advice of the FIFRA SAP regarding their assessment of the IRM plan. The guidance provided by the FIFRA SAP along with comments provided by the public will be considered by the Agency in making its decision on the application for registration for products containing Cry3Bb1.

C. Request for Nominations to Serve as Ad-Hoc Members of the FIFRA Scientific Advisory Panel for This Meeting

The FIFRA SAP staff routinely solicit the stakeholder community for nominations to serve as ad-hoc members of the FIFRA SAP for each meeting. Any interested person or organization may nominate qualified individuals to serve on the FIFRA SAP for a specific meeting. No interested person shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Individuals nominated should have expertise in one or more of the following areas: Insect biology, insect resistance management, and non-target effects. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** by August 5, 2002.

The criteria for selecting scientists to serve on the Panel are that these persons be recognized scientists--experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); have no financial conflict of interest; have not previously been involved with the scientific peer review of the issue(s) presented; and that they be available to participate fully in the review, which will be conducted over a relatively short time frame. Nominees will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. Finally, they will be asked to review and to help finalize the meeting minutes.

If a Panel nominee is considered to assist in a review by the SAP for a particular session, the nominee is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the Panel nominee is required to submit a Confidential Financial Disclosure Report which shall fully disclose, among other financial interests, the nominee's employment, stocks, and bonds, and where applicable, sources of research support. The EPA will evaluate the nominee's financial disclosure form to assess that there are no formal conflicts of interest before the nominee is considered to serve on the Panel. Selected Panel members will be hired as a Special Government Employee. The Agency will review all nominations; a decision on Panel members for the meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of the **SUPPLEMENTARY INFORMATION.**

D. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days. The minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of the **SUPPLEMENTARY INFORMATION.**

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 17, 2002.

Sherell A. Sterling,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 02–18725 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0132; FRL–7189–3]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active

ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0132, must be received on or before August 23, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0132 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354 and e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0132. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0132 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), OPP, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0132. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 66330–UG. *Applicant*: Arvesta Corporation, 100 First Street, Suite 1700, San Francisco, CA 94105. *Product name*: TM-42501. *Active ingredient*: Iodomethane at 98%. *Proposed classification/Use*: Restricted use. For pre-plant fumigation onto fields intended for commercial production of strawberries, tomatoes, peppers, and ornamental flowers, plants, and bushes for the control of soil-borne pests, including nematodes, insects, weed and grass seeds, and diseases.

2. *File Symbol*: 66330–UU. *Applicant*: Arvesta Corporation, *Product name*: Iodomethane Technical. *Active ingredient*: Iodomethane at 100%. *Proposed classification/Use*: None. For formulation or repackaging into end-use products intended for terrestrial non-food uses for the control of soil-borne pests.

3. *File Symbol*: 66330–UE. *Applicant*: Arvesta Corporation. *Product name*: TM-42503. *Active ingredients*: Iodomethane at 25% and chloropicrin at 75%. *Proposed classification/Use*: Restricted use. For pre-plant fumigation onto fields intended for commercial production of strawberries, tomatoes, peppers, and ornamental flowers, plants, and bushes for the control of soil-borne pests,including nematodes, insects, weed and grass seeds, and diseases.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: July 12, 2002.

Richard P. Keigwin, Jr.,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–18587 Filed 7–23–02; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0123; FRL–7184–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0123, must be received on or before August 23, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0123 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224 e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0123. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0123 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–2002–0123. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance ith procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 11, 2002.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

OF6210

Summary of Petition

EPA has received a pesticide petition from Aventis CropScience USA, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.473(c) by establishing a tolerance for residues of the herbicide glufosinate-ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl-, monoammonium salt) and its metabolites, 3-methylphosphinicopropionic acid, and 2-acetamido-4-methylphosphinico-butanoic acid expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents in or on the raw agricultural commodity (RAC) derived from transgenic rice tolerant to glufosinate-ammonium: Grain at 1.0 parts per million (ppm), straw at 1.6 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* A metabolism study was conducted on transgenic rice using 14^{C}-glufosinate-ammonium. Two treatment regimes were examined to simulate commercial application practices. The results from both treatments were similar. The principal residue in the grain at harvest was 3-methylphosphinicopropionic acid (Hoe 061517; approximately 70% of the total radioactive residues (TRR). Other relevant residues in the grain included N-acetyl-L-glufosinate (2-acetamido-4-methylphosphinicobutanoic acid; Hoe 099730) at about 11% of the TRR and parent at 5–6% of the TRR. In the straw, 3-methylphosphinicopropionic acid was the predominate component comprising approximately 60% of the TRR. Lesser amounts of the parent (about 17% of the TRR) and N-acetylglufosinate (10–13% of TRR) were found in the straw fraction. These results are consistent

with previous metabolism studies conducted using glufosinate-ammonium on other transgenic crops. As a result of all the metabolism studies conducted, the nature of residues found in transgenic plants as a result of a treatment of glufosinate-ammonium is well understood.

2. *Analytical method.* The enforcement analytical method utilizes gas chromatography for detecting and measuring levels of glufosinate-ammonium and metabolites with a general limit of quantification of 0.05 ppm. This method allows detection of residues at or above the proposed tolerances.

3. *Magnitude of residues.* Field residue trials were conducted across the major regions of rice production in the U.S. The treatment regime was selected to represent the use pattern that is the most likely to result in the highest residues. Glufosinate-ammonium derived residues did not exceed 0.74 ppm in rice grain, and 1.48 ppm in rice straw when sampled at 70 days or more after the last treatment. No concentration of the residues occurred when rice whole grain was processed into polished grain and bran, whereas a concentration factor of approximately 2.3 was found for rice hulls.

B. Toxicological Profile

1. *Acute toxicity.* Glufosinate-ammonium has been classified as toxicity category III for acute oral, dermal, and inhalation toxicity; and for eye irritation. Glufosinate-ammonium is not a dermal irritant (toxicity category IV) nor is it a dermal sensitizer. The oral LD_{50} is 2 g/kg in male rats, and 1.62 g/kg in female rats.

2. *Genotoxicty.* Based on results of a complete genotoxicity database, there is no evidence of mutagenic activity in a battery of studies, including: *Salmonella* spp., *E. coli*, *in vitro* mammalian cell gene mutation assays, mammalian cell chromosome aberration assays, *in vivo* mouse bone marrow micronucleus assays, and unscheduled DNA synthesis assays.

3. *Reproductive and developmental toxicity.* In a developmental toxicity study, groups of 20 pregnant female Wistar rats were administered glufosinate-ammonium by gavage at doses of 0, 0.5, 2.24 10, 50 and 250 mg/kg/day from days 7 to 16 of pregnancy. The no observed adversed effect level (NOAEL) for maternal toxicity is 10 mg/kg/day; the lowest observed adverse effect level (LOAEL) is 50 mg/kg/day based on vaginal bleeding and hyperactivity in dams. In the fetus, the NOAEL is 50 milligrams/kilogram/day (mg/kg/day), based on dilated renal pelvis observations at the LOAEL of 250 mg/kg/day. In a developmental toxicity study, groups of 15 pregnant female Himalayan rabbits were administered glufosinate-ammonium by gavage at doses of 0, 2.0, 6.3, or 20.0 mg/kg/day from days 7 to 19 of pregnancy. In maternal animals, decreases in food consumption and body weight gain were observed at the 20 mg/kg/day dose level. The NOAEL for maternal toxicity was 6.3 mg/kg/day and that for developmental toxicity was 20 mg/kg/day.

In a multi-generation reproduction study, glufosinate-ammonium was administered to groups of 30 male and 30 female Wistar/Han rats in the diet at concentrations of 0, 40, 120, or 360 ppm. The LOAEL for systemic toxicity is 120 ppm based on increased kidney weights in both sexes and generations. The systemic toxicity NOAEL is 40 ppm. The LOAEL for reproductive/developmental toxicity is 360 ppm based on decreased numbers of viable pups in all generations. The NOAEL is 120 ppm.

4. *Subchronic toxicity.* In a subchronic oral toxicity study, glufosinate-ammonium was administered to 10 NMRI mice/sex/dose in the diet at levels of 0, 80, 320 or 1,280 ppm equivalent to 0, 12, 48 or 192 mg/kg/day for 13 weeks. Significant (< 0.05) increases were observed in serum aspartate aminotransferase and in alkaline phosphatase in high-dose (192 mg/kg/day) males. Also observed were increases in absolute and relative liver weights in mid-(48 mg/kg/day) and high-dose males. The NOAEL is 12 mg/kg/day, the LOAEL is 48 mg/kg/day based on the changes in clinical biochemistry and liver weights.

5. *Chronic toxicity.* In a combined chronic toxicity/oncogenicity study, glufosinate-ammonium was administered to 50 Wistar rats/sex/dose in the diet for 130 weeks at dose levels of 0, 40, 140, or 500 ppm (mean compound intake in males was 0, 1.9, 6.8, and 24.4 mg/kg/day and for females was 0, 2.4, 8.2 and 28.7 mg/kg/day, respectively). A dose-related increase in mortality was noted in females at 140 and 500 ppm, whereas in males increased absolute and relative kidney weights were noted at 140 ppm, and 500 ppm. The NOAEL was considered to be 40 ppm. No treatment-related oncogenic response was noted.

In an oncogenicity study, glufosinate-ammonium was administered to 50 NMRI mice/sex/dose in the diet at dose levels of 0, 80, 160 (males only), or 320 (females only) ppm for 104 weeks. The NOAEL for systemic toxicity is 80 ppm (10.82/16.19 mg/kg/day in males/females (M/F)), and the LOAEL is 160/320 ppm (22.60/ 63.96 mg/kg/day in M/F), based on increased mortality in males, increased glucose levels in M/F, and changes in glutathione levels in males. No increase in tumor incidence was found in any treatment group. In a chronic feeding study, technical glufosinate-ammonium was fed to M/F beagle dogs for 12 months in the diet at levels of 2.0, 5.0, or 8.5 mg/kg/day. The NOAEL is 5.0 mg/kg/day based on clinical signs of toxicity, reduced weight gain and mortality 8.5 mg/kg/day. In a rat oncogenicity study, glufosinate-ammonium was administered to Wistar rats (60/sex/group) for up to 24 months at 0, 1,000, 5,000, or 10,000 ppm (equivalent to 0, 45.4, 228.9, or 466.3 mg/kg/day in males, and 0, 57.1, 281.5, or 579.3 mg/kg/day in females). The LOAEL for chronic toxicity is 5,000 ppm (equivalent to 228.9 mg/kg/day for male rats, and 281.5 mg/kg/day for females), based on increased incidences of retinal atrophy. The chronic NOAEL is 1,000 ppm. Under the conditions of this study, there was no evidence of arcinogenic potential. Dosing was considered adequate based on the increased incidence of retinal atrophy.

6. *Animal metabolism.* Studies conducted in rats using 14^{C}- glufosinate-ammonium have shown that th compound is poorly absorbed (5–10%) after oral administration and is rapidly eliminated primarily as the parent compound. The highest residue levels were found in liver and kidney tissues.

The metabolic profile and the quantitative distribution of metabolites were very similar in both goat and hen. The vast majority of the dose was excreted, primarily as parent compound. The very limited residues found in edible tissues, milk, and eggs were comprised principally of glufosinate and 3-methylphosphinico-propionic acid (Hoe 061517), with lesser amounts of N-acetyl-L-glufosinate (Hoe 099730) and 2-methylohosphinico-acetic acid (Hoe 064619).

7. *Metabolite toxicology.* Additional testing has been conducted with the major metabolites, 3-methylphosphinico-propionic acid, and N-acetyl-L-glufosinate. Based on subchronic and developmental toxicity study results, a profile of similar or less toxicity was observed for the metabolites as compared to the parent compound, glufosinate-ammonium.

8. *Endocrine disruption.* No special studies have been conducted to investigate the potential of glufosinate-ammonium to induce estrogenic or other endocrine effects. However, no evidence of estrogenic or other endocrine effects have been noted in

any of the toxicology studies that have been conducted with this product and there is no reason to suspect that any such effects would be likely.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerances have been established (40 CFR 180.473) for the combined residues of glufosinate-ammonium and metabolites in or on a variety of RACs. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicity studies. EPA has, therefore, not established an acute RfD for the general population including infants and children. An acute RfD of 0.063 mg/kg/day was established, however, for the females 13+ subgroup. Therefore, an acute dietary analysis was conducted for this sub-population; whereas, chronic dietary analysis was conducted for the usual populations.

i. *Food.* An acute dietary analysis was conducted using the DEEM™ software and the 1994–1996 CSFII consumption database. The analysis assumed tolerance level residues for all commodities and 100% of crop treated for all registered or pending uses. This Tier One analysis resulted in an exposure of 0.007124 mg/kg bw/day (95th percentile) for the female 13+ sub-population (the only population of concern) representing 34% utilization of the acute RfD.

Chronic dietary analysis was conducted to estimate exposure to potential glufosinate-ammonium residues in or on registered and proposed commodities. The DEEM™ software and the 1994–1996 USDA food consumption data were used. Tolerance level residues were assumed for all commodities. Percent crop treated values generated by EPA/BEAD were incorporated as follows: Tree nuts, 1%; apples, 1%; field corn, 2.6%; grapes, 1%;, and soybeans, 1%. Aventis CropScience estimates that an upper bound value for cotton at market maturity is 20% and that for potatoes is 10%. All other crops are included at 100% of crop treated. Chronic dietary exposure estimates from residues of glufosinate-ammonium for the U.S. population represented approximately 25% of the chronic RfD; whereas that for children 1-6, the sub-population with the highest exposure, represented approximately 61% of the chronic RfD. The approach used is very conservative, yet still indicates that dietary exposures for all segments of the population are well within the chronic RfDs. This analysis was based on highly conservative assumptions. The Agency has no concerns with RfD utilization up to 100%.

ii. *Drinking water.* EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was used to perform the drinking water assessment. The models Screening concentrating in ground water (SCI-GROW) and Pesticide Root Zone Model-Exposure Modeling System (PRZM-EXAMS) were used to estimate the concentration of glufosinate-ammonium that might occur in water. The acute drinking water level of comparison (DWLOC) for females 13+ is 417 ppb. In comparison, the acute drinking water estimated concentrations (DWEC) calculated by Generic expected environmental concentration (GENEEC) is 127 ppb.

The chronic DWLOC calculated for adults is 185 ppb and that for children/toddlers is 41 parts per billion (ppb). The chronic DWEC calculated using a worst case scenario is 31 ppb (GENEEC). The drinking water levels of comparison are based on highly conservative dietary (food) exposures and are expected to be much higher in real world situations reducing further the percent utilization of the DWLOC.

2. *Non-dietary exposure.* Glufosinate-ammonium is currently registered for use on the following non-food sites: areas around ornamentals, shade trees, Christmas trees, shrubs, walks, driveways, flower beds, farmstead buildings, in shelter belts, and along fences. It is also registered for use as a post-emergent herbicide on farmsteads, areas associated with airports, commercial plants, storage and lumber yards, highways, educational facilities, fence lines, ditch banks, dry ditches, schools, parking lots, tank farms, pumping stations, parks, utility rights-of-way, roadsides, railroads, and other public areas and similar industrial and non-food crop areas. It is also registered for lawn renovation uses.

The EPA has determined that there are no acute or chronic non-dietary exposure scenarios. Further, the Agency has determined that it is not appropriate to aggregate short-term and intermediate-term non-dietary exposure with dietary exposures in risk assessments because the end-points are different.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has indicated that, at this time, the Agency does not have available data to determine whether glufosinate-ammonium has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, glufosinate-ammonium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance petition, therefore, it has not been assumed that glufosinate-ammonium has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the conservative assumptions described above and based on the completeness and reliability of the toxicity data, it is concluded that chronic dietary exposure to the registered and proposed uses of glufosinate-ammonium will utilize at most 25% of the chronic RfD for the U.S. population. The actual exposure is likely to be significantly less than predicted by this analysis as data and models that are more realistic are developed. Exposures below 100% of the reference dose (RfD) are generally assumed to be of no concern because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health.

The acute population of concern, female 13+ utilizes 34% of the acute RfD. This is a Tier One highly conservative assessment and actual exposure is likely to be far less. Drinking water levels of comparison based on dietary exposures are greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the RfD, if they occur at all.

EPA has concluded that it is not appropriate to aggregate non-dietary exposures with dietary exposures in a risk assessment because the toxicity end-points are different.

Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food, drinking water and nonresidential) to residues of glufosinate-ammonium and metabolites.

2. *Infants and children.* The toxicological database is sufficient for evaluating prenatal and postnatal toxicity for glufosinate-ammonium. There are no prenatal or postnatal susceptibility concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproduction study. Based on clinical signs of neurological toxicity in short

and intermediate dermal toxicity studies with rats, EPA has determined that an added FQPA safety factor of 3x is appropriate of assessing the risk of glufosinate-ammonium derived residues in crop commodities.

Using the conservative assumptions described in the exposure section above, the percent of the chronic RfD that will be used for exposure to residues of glufosinate-ammonium in food for children 1–6 (the most highly exposed sub-group) is 61%. Infants utilize 37% of the chronic RfD. As in the adult situation, drinking water levels of comparison are higher than the worst case DWECs and are expected to use well below 100% of the RfD, if they occur at all.

Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of glufosinate-ammonium.

F. International Tolerances

Maximum residue limits (Codex MRLs) for glufosinate-ammonium and metabolites in or on rice commodities have not been established by the Codex Alimentarius Commission.

[FR Doc. 02–18586 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0084; FRL–7188–8]

Pesticides; Draft Guidance for Pesticide Registrants on False or Misleading Pesticide Product Brand Names; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Extension of comment period.

SUMMARY: In the **Federal Register** of March 28, 2002, EPA published a document announcing the availability of and sought public comment on a draft Pesticide Registration (PR) Notice titled, ''False or Misleading Pesticide Product Brand Names.'' PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. The draft PR Notice provides guidance to registrants, applicants, and the public as to what product brand names may be false or misleading, either by themselves or in association with company names or trademarks. In response to a request from stakeholders, EPA extended the comment period for 60 days, until August 1, 2002, and is now extending the comment period for an additional 90 days, until October 30, 2002.

DATES: Comments, identified by docket ID number OPP–2002–0084, must be received on or before October 30, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0084 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Jeff Kempter, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5448; fax number: (703) 308–6467; e-mail address: kempter.carlton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general although this action may be of particular interest to those persons who are required to register pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You may obtain an electronic copy of all PR Notices, both final and draft, at http://www.epa.gov/opppmsd1/PR_Notices.

2. *Fax-on-demand*. You may request a faxed copy of the draft PR Notice titled, ''False or Misleading Pesticide Product Brand Names,'' by using a faxphone to call (202) 564–3119 and selecting item 6146. You may also follow the automated menu.

3. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0084. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0084 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information

electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0084. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is EPA Taking?

In the **Federal Register** of March 28, 2002 (67 FR 14941) (FRL–6809–9), EPA announced the availability of a draft PR Notice titled, ''Pesticides; Draft Guidance for Pesticide Registrants on False or Misleading Pesticide Product Brand Names.'' The Agency provided a 60–day comment period, which was scheduled to end May 28, 2002. EPA extended the comment period for the draft PR Notice for 60 days in the **Federal Register** of May 24, 2002 (67 FR 36595) (FRL–7180–9), until August 1, 2002, and is now extending the comment period for an additional 90 days, until October 30, 2002.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: July 16, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 02–18716 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7250–7]

LCP-Holtrachem Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent order.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a consent order for a removal action pursuant to section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, regarding the LCP-Holtrachem Superfund Site located in Riegelwood, Columbus County, North Carolina. EPA will consider public comments on the cost recovery component of the proposed settlement, section VIII, for thirty (30) days. EPA may withhold consent to all or part of section VIII of the proposed settlement should such comments disclose facts or considerations which indicate section VIII is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of this publication.

Dated: July 11, 2002.

James T. Miller,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–18714 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7250–3]

Notice of Availability of List of Impaired Waters Prepared by the Commonwealth of Virginia Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: On July 15, 2002, the Commonwealth of Virginia published a notice announcing that it was making available for public comment its proposed ''2002 303(d) Report on Impaired Waters.'' The Department of Environmental Quality (DEQ) of the Commonwealth of Virginia prepared this proposed report pursuant to section 303(d)(1)(A) of the Clean Water Act (CWA), 33 U.S.C. 1313(d)(1)(A), and implementing regulations at 40 CFR 130.7(b). The purpose of today's notice is to provide additional notice to the public of the availability of that proposed report. On July 15, 2002, the Virginia Department of Environmental Quality also announced the availability of its 2002 ''305(b) Water Quality Assessment.''

DATES: Comments on both reports should be sent by midnight August 16, 2002 to the Virginia Department of Environmental Quality. In addition, the Virginia Department of Environmental Quality will hold public information meetings regarding the 303(d) and 305(b) reports on July 29, July 31, and August 1, 2002.

ADDRESSES: Submit written comments to Mr. Darryl M. Glover, DEQ Water Quality Monitoring and Assessment Manager, at P.O. Box 10009, Richmond, Virginia 23240–0009, or via e-mail to *dmglover@deq.state.va.us.* Please include your name, (US mail) address, and telephone number.

The public information meetings will be held as follows:

- July 29th, 2 p.m.–3:30 p.m.—DEQ West Central Regional Office, 3019 Peters Creek Road in Roanoke. For directions please call (540) 562–6700.
- July 31st, 1:30 p.m.–3 p.m.—DEQ Northern Va. Regional Office, 13901

Crown Court in Woodbridge. For directions please call (703) 583–3800.

• August 1st, 1:30 p.m.–3 p.m.—DEQ Piedmont Regional Office, 4949–A Cox Road in Glen Allen. For directions please call (804) 527–5020.

FOR FURTHER INFORMATION CONTACT: The Virginia 2002 303(d) Report on Impaired Waters is available for download at *http://www.deq.state.va.us/water/303d.html* throughout the public comment period, which ends on August 16, 2002. A hard copy will be made available upon request by phoning Diana Baumann at (804) 698–4310. In the United States Environmental Protection Agency, contact Mr. Thomas Henry at (215) 814–5752.

SUPPLEMENTARY INFORMATION: The purpose of Virginia's proposed 303(d) list is to identify waters in the Commonwealth of Virginia for which Total Maximum Daily Loads (TMDLs) under CWA Section 303(d) need to be developed. The proposed report identifies waters as impaired if they do not support, or only partially support, one or more of five designated uses (i.e., aquatic life, fish consumption, shellfish consumption, swimming, and drinking water). Support of the designated uses is based on attainment of Virginia's water quality standards, which include numeric and narrative criteria. Attainment is determined by the assessment of all available monitoring data and water quality information.

EPA is providing this notice in compliance with Paragraph 4(b) of the consent degree entered in the case of *American Canoe Assoc., et al.* v. *EPA, Civil Action No. 98–979A*, on June 11, 1999.

Jon M. Capacasa,

Acting Division Director, Water Protection Division, EPA, Region III.

[FR Doc. 02–18583 Filed 7–23–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC is seeking public comments on its proposal to extend through December 31, 2005 the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in its Fuel Rating Rule (''Rule''). That clearance expires on December 31, 2002.

DATES: Comments must be filed by September 23, 2002.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned ''Fuel Rating Rule: Paperwork Comment.'' Comments in electronic form should be sent to: *Fuel Rating PRA@ftc.gov* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3038.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *Fuel Rating PRA@ ftc. gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

The Fuel Rating Rule establishes standard procedures for determining, certifying, and disclosing the octane rating of automotive gasoline and the automotive fuel rating of alternative liquid automotive fuels, as required by the Petroleum Marketing Practices Act. 15 U.S.C. 2822(a)–(c). The Rule also requires refiners, producers, importers, distributors, and retailers to retain records showing how the ratings were determined, including delivery tickets or letters of certification.

Estimated annual hours burden: 42,000 total burden hours (17,000 recordkeeping hours + 25,000 disclosure hours).

Recordkeeping: Based on industry sources, staff estimates that 200,000 fuel industry members each incur an average annual burden of approximately five minutes to ensure retention of relevant business records for the period required by the Rule, resulting in a total of 17,000 hours, rounded.

Disclosure: Staff estimates that affected industry members incur an average burden of approximately one hour to produce, distribute, and post octane rating labels. Because the labels are durable, only about one of every eight industry members (*i.e.*, approximately 25,000 of 200,000 industry members) incur this burden each year, resulting in a total annual burden of 25,000 hours.

Estimated annual cost burden: $739,000, rounded ($672,000 in labor costs and $67,000 in non-labor costs).

Labor costs: Staff estimates that the work associated with the Rule's recordkeeping and disclosure requirements is performed by skilled clerical employees at an average rate of $16.00 per hour. Thus, the annual labor cost to respondents of complying with the recordkeeping and disclosure requirements of the Rule is estimated to be $672,000 ((17,000 hours + 25,000 hours) × $16.00 per hour).

Capital or other non-labor costs: $67,000, rounded up to the nearest thousand.

Staff believes that there are no current start-up costs associated with the Rule. Because the Rule has been effective since 1979 for gasoline, and since 1993 for liquid alternative automotive fuels, industry members already have in place the capital equipment and other means necessary to comply with the Rule. Retailers (approximately 175,000

industry members), however, do incur the cost of procuring (and replacing) fuel dispenser labels to comply with the Rule. According to industry input, the price per label is about thirty-eight cents. Based on ranging industry estimates of a 6–10 year useful life per dispenser label, staff will conservatively factor into its calculation of labeling cost the shortest assumed useful life, *i.e.*, 6 years. Staff believes that the average retailer has six dispensers, with all of them being obtained either simultaneously or otherwise within the same year. Assuming that, in any given year, 1/6th of all retailers (29,167 retailers) will replace their dispenser labels, staff estimates total labeling cost to be $66,500 (29,167 × 6 × .38).

William E. Kovacic,

General Counsel.

[FR Doc. 02–18705 Filed 7–23–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Public Workshop: Possible Anticompetitive Efforts To Restrict Competition on the Internet

AGENCY: Federal Trade Commission.

ACTION: Notice of Public Workshop and Opportunity for Comment

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') announces a public workshop on ''Possible Anticompetitive Efforts to Restrict Competition on the Internet.'' The workshop will focus on how certain state regulation may have anticompetitive effects, and how certain business practices may raise antitrust concerns, in the context of business-to-consumer e-commerce. The workshop will be held at and administered by the FTC.

DATES: The workshop will take place on October 8–10, 2002. The workshop will be transcribed and placed on the public record. Any interested person may submit written comments responsive to any of the topics to be addressed; such comments should be submitted no later than the last session of the workshop. Any written comments received also will be placed on the public record.

ADDRESSES: When in session, the workshop will be held at the FTC headquarters, 600 Pennsylvania Avenue, NW., Washington, DC. All interested parties are welcome to attend. Pre-registration is not required.

Written comments should be submitted in both hard copy and electronic form. Six hard copies of each submission should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Submissions should be captioned ''Comments regarding ecompetition.'' Electronic submissions may be sent by electronic mail to ''*ecompetition@ftc.gov*''. Alternatively, electronic submissions may be filed on a 3½-inch computer disk with a label on the disk stating the name of the submitter and the name and version of the word processing program used to create the document.

FOR FURTHER INFORMATION CONTACT: Jerry Ellig, Deputy Director, Office of Policy Planning, 600 Pennsylvania Avenue, NW., Washington, DC 20580; telephone (202) 326–3528; e-mail: *jellig@ftc.gov*. Detailed agendas for the workshop will be available on the FTC home page (*http://www.ftc.gov*) and through Mildred Taylor, Staff Secretary, at (202) 326–2553.

SUPPLEMENTARY INFORMATION:

Overview

In the past decade, there has been growing concern about possible anticompetitive efforts to restrict competition on the Internet. In particular, many states have enacted regulations that have the direct effect of protecting local merchants from competition over the Internet. For example, some states require that online vendors maintain an in-state office, while other states prohibit online sales of certain products entirely. Some scholars have argued that these regulations are often simply attempts by existing industries to forestall the entry of new and innovative Internet competitors, much as in prior eras, other entrenched producers have benefited from regulatory effort to impede new forms of competition.

Similarly, some private companies have engaged in conduct that may raise antitrust issues. For instance, some manufacturers and dealers do not list prices for certain items online, and others do not sell certain items over the Internet altogether and urge horizontal competitors to do the same. Depending on the circumstances, some of these restrictions could be viewed as potentially anticompetitive. While much of this regulation and conduct undoubtedly has pro-competitive and pro-consumer rationales, the regulations impose costs on consumer that, according to some estimates, may exceed $15 billion annually.

For these reasons, a workshop on possible anticompetitive efforts to restrict competition on the Internet is timely, and will build on previous FTC-sponsored events that addressed other aspects of e-commerce.[1] In order to enhance the Commission's understanding of particular practices and regulations, the workshop will have panels to address certain specific industries, including some or all of the following: retailing, automobiles, cyber-charter schools, real estate/mortgages, health care/pharmaceuticals/telemedicine, wine sales, auctions, contact lenses, and funerals (caskets).

Each of these industries has experienced some growth in commerce via the Internet, but according to various commentators, each also may have been hampered by anticompetitive state regulation or business practices. *See. e.g.,* Atkinson, The Revenge of the Disintermediated (Jan. 2001) (report of the Progressive Policy Institute); Atkinson and Wilhilm. The Best States for E-Commerce (Mar. 2002) (second report of the Progressive Policy Institute). In addition, these industries involve goods and services that comprise a very large portion of a consumer's budget, such as homes, cars, schools, and health care.

It is intended that each industry panel have at least one independent analyst or academic, and also have representatives from the affected industries (on both sides of the issue). Where appropriate, the panel also will include a representative from a government agency, including (where appropriate) representatives from different states. We hope that each panel will provide all sides of the issue, including the perspectives of industry, intermediaries, consumers, and regulators.

The Commission also invites comments concerning other industries, not listed above, that may raise similar issues and merit similar examination.

Issues

Below is a non-exhaustive list of issues to be addressed by the workshop. Written comments need not address all of these issues.

1. General Issues

What role does competitive law and policy play in fostering or hindering e-commerce? From a practical business perspective, how does each foster or impede e-commerce? What do empirical studies show?

Does state regulation have protectionist effects, and if so how? What are the benefits of such regulation, and do the benefits outweigh the costs? What is the prevalence of such state

[1] For more information on previous FTC-sponsored events regarding e-commerce, see *http://www.ftc.gov/opp/ecommerce/index.htm; http://www.ftc.gov/opa/2000/05/b2bworkshop.htm.*

regulation? Are some types of regulations more friendly to e-commerce?

Do businesses try to limit competition over the Internet through anticompetitive efforts, and if so how? What are the business justifications for these efforts?

2. Issues for Particular Industries

Retailing

How and why do manufacturers limit their distributors' sales of certain products over the Internet? What are the costs to consumers? Do distributors pressure manufacturers into limiting sales over the Internet, and if so how? Are such efforts facilitated by horizontal agreements? Does such conduct raise antitrust concerns, and are there legitimate business justifications, such as concerns about free-riding, for limiting e-commerce sales?

Automobiles

Have manufacturers been forced to limit Internet sales of automobiles, and if so how? What are the costs to consumers? Are there legitimate concerns about free-riding or differentials in bargaining power? Are there different issues concerning the sale of new and used cares? What regulations have been applied to the sale of new or used cars through online auction sites? Does state regulation have the effect of protecting dealers from competition, to the possible detriment of consumers, or does existing state regulation provide important protection to consumers?

Cyber-Charter Schools

How have states fostered or hindered cyber-charter schools? What are the competitive benefits of cyber-schools? Are there legitimate consumer protection concerns? Do the efforts of some school districts to limit cyber-charter schools raise any antitrust issues? What is the current status and focus of litigation, and what types of legislative solutions are possible?

Real Estate/Mortgages

What types of state regulations limit online real estate an mortgage services? What are the costs to consumers? What is the impact of regulations requiring real estate closings or refinancing to be conducted solely by attorneys? What are the pro-consumer rationales for such regulations, and are there less restrictive means of achieving the same goals? What is the impact of Internet competition upon real estate commissions,and how are realtors responding to that competition?

Health Care/Pharmaceuticals/ Telemedicine

What types of state regulations limit online provision of health care goods and services, such as pharmaceuticals and telemedicine? What are the costs to consumers? Are these regulations directed mainly at out-of-state competitors? Are online prescriptions particularly susceptible to abuse? What are the pro-consumer rationales for regulations, and are there less restrictive means of achieving the same goals? Are reciprocity statues an effective way to dealing with these issues?

Wine Sales

How does the ''three tier'' system for distributing wine limit online sales, and are there legitimate justifications, such as temperance or taxation, for the system? What are the costs to consumers? Are there separate and measurable price and variety effects? Are there less restrictive means for achieving the same goals, and are reciprocity statues a viable alternative? What is the status of the ongoing litigation addressing this system?

Auctions

How have states applied their existing auctioneering regulations to online auction sites? What are the costs to consumers? Have states enacted new regulations targeted at online auctions? Do such regulations limit competition from online auctions, and if so how? Do those regulations impact large and small online auctioneers differently? To what extent are online auctions replacing traditional retail outlets, for consumers goods, automobiles (new or used), and other products? What types of state regulation can best protect consumers while still allowing competition from online auctions?

Contact Lenses

What types of state regulations limit online sales of contact lenses? What are the costs to consumers? What are the health justifications for such regulations, and how valid are they? Are there separate issues for replacement lenses or disposable lenses? How should prescription requirements be administered? Have manufacturers limited the supply of contact lenses to online vendors, and if so why?

Funerals (Caskets)

What types of state regulations limit online casket sales? What are the costs to consumers? What are the pro-consumer rationales for such regulaitons, particularly in light of the recent controversies? Are there less restrictive means of achieving the same goals? What is the status and focus of current litigation?

The Commission welcomes suggestions for other questions that also shuld be addressed. Proposed questions, identified as such, may be sent by electronic mail to *competition@ftc.gov.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–18704 Filed 7–23–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—06/24/2002			
20020795	Kaman Corporation	Dae Y. Shin	DSE Inc.
20020868	Holding Eurocard, S.A.	MasterCard Incorporated	MasterCard Incorporated.

Trans #	Acquiring	Acquired	Entities
20020872	CSFB Global Opportunities Partners, L.P.	Oxford Automotive, Inc	Oxford Automotive, Inc.
20020876	Daniel K. Thome	GS Industries (Debtor-In-Possesion).	Georgetown Steel Corporation.
20020880	WorldCom, Inc	Star Telecommunications, Inc	PT–1 Communications, Inc. PT–1 Long Distance, Inc. PT–1 Technologies, Inc.
20020882	The PMI Group, Inc	Fairbanks Capital Holding Corp	Fairbanks Capital Holding Corp.
20020883	AT&T Broadband Corp	GSA Commerce, Inc	GSA Commerce, Inc.
20020884	GTCR Fund VII, L.P	Alex E. Gores	VeriFone, Inc.
Transactions Granted Early Termination—06/25/2002			
20020873	MedPoint Inc	MedPoint Inc	Wallace Pharmaceuticals/ASTA Medica L.L.C.
20020879	Cooperatieve Centrale Raiffeisen—Boerenleenbank B.A.	General Mills, Inc	General Mills, Inc. GM Cereals Operations, Inc.
Transactions Granted Early Termination—06/26/2002			
20020888	Alcatel	Telera, Inc	Telera, Inc.
Transactions Granted Early Termination—06/28/2002			
20020838	DRS Technologies, Inc	Eaton Corporation	Eaton Corporation.
20020853	Striker Corporation	Tyco International Ltd	Surgical Dynamics Canada, Inc. Surgical Dynamics Germany GmbH. Surgical Dynamics Inc.
20020858	South African Breweries plc	Philip Morris Companies, Inc	Miller Brewing Company.
20020869	GS Capital Partners 2000, L.P	Atlantic Equity Partners International II, L.P.	BPC Holding Corporation.
20020893	Group 1 Automotive, Inc.	Miller Trust of 1980 (restated)	Miller Automotive Group Inc.
20020898	Electronic Data System Corporation.	Loudcloud, Inc	Loudcloud, Inc.
20020902	CompuCredit Corporation	Federated Department Stores Inc	Fingerhut Receivables, Inc.
20020905	Novell, Inc	SilverStream Software, Inc	SilverStream Software, Inc.
Transactions Granted Early Termination—07/01/2002			
20020863	Aquila, Inc	George T. Lewis, Jr. and Betty G. Lewis.	Cogentrix Energy, Inc.
20020871	ABM Industries Incorporated	Michael Sweig	Lakeside Building Maintenance, Inc.
20020877	Carl C. Icahn	Tyco International Ltd	Tyco International Ltd.
20020896	Gray Communication Systems, Inc.	Stations Holding Company, Inc	Stations Holding Company, Inc.
Transactions Granted Early Termination—07/02/2002			
20020900	Thomas J. Petters	Federated Department Stores, Inc.	Fingerhut Companies, Inc.
20020901	Theordore Deikel	Federated Department Stores, Inc.	Fingerhut Companies, Inc.
Transactions Granted Early Termination—07/03/2002			
20020906	Cemex, S.A. de C.V	Puerto Rican Cement Company, Inc.	Puerto Rican Cement Company, Inc.
Transactions Granted Early Termination—07/04/2002			
20020892	Warburg Pincus Private Equity VIII, L.P.	Agere Systems, Inc	Agere Systems, Inc.
Transactions Granted Early Termination—07/05/2002			
20020899	Proxim Corporation	Agere Systems, Inc.	Agere Systems, Inc.
20020907	EDO Corporation	Behrman Capital II, L.P	CEI Systems, Inc. Condor Systems, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative. Federal Trade Commission, Premeger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580. (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–18703 Filed 7–23–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 021 0059]

Amgen Inc. and Immunex Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 12, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Jex, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3273.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 12, 2002), on the World Wide Web, at ''*http://www.ftc.gov/os/2002/07/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a proposed Consent Order from Amgen Inc. (''Amgen'') and Immunex Corporation (''Immunex'') that is designed to remedy the anticompetitive effects of the merger of Amgen and Immunex. Under the terms of the agreement, the companies would be required to: (1) Divest of all Immunex's assets relating to Leukine (a neutrophil regeneration factor) to Schering AG (''Schering''); (2) license certain Amgen patents relating to its tumor necrosis factor (''TNF'') receptor to Serono S.A. (''Serono''); and (3) license certain Amgen and Immunex patents relating to the development of Interleukin-1 (''IL–1'') receptors to Regeneron Pharmaceuticals Inc. (''Regeneron'').

The proposed Consent Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

In their merger agreement of December 16, 2001, Amgen and Immunex propose to combine their two companies in a transaction valued at approximately $16 billion. Thereafter, the merged entity will be called Amgen Inc. The proposed Complaint alleges that the proposed merger, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the markets for: (1) Neutrophil regeneration factors; (2) TNF inhibitors; and (3) IL–1 inhibitors. The proposed Consent Order would remedy the alleged violations by replacing the lost competition in each of these markets that would result from the merger.

Neutrophil Regeneration Factors

Neutrophil regeneration factors are used to treat neutropenia, the suppression of production of certain white blood cells (known as ''neutrophils'') which often results from chemotherapy. Immunex's product, Leukine, stimulates the production of both granulocytes and macrophages, two types of neutrophils, while Amgen's products, Neupogen and Neulasta, stimulate the production of granulocytes. The use of these products to stimulate neutrophil regeneration allows patients to maintain a robust immune system while continuing with their chemotherapy regimens. Annual U.S. sales of neutrophil regeneration factors total approximately $1.2 billion.

The market for neutrophil regeneration factors is highly concentrated. Amgen and Immunex are the only companies with neutrophil regeneration factors approved for sale in the United States. Amgen's Neupogen is the leading product in this market, with 2001 sales of approximately $1.05 billion in the United States. In January 2002, Amgen launched Neulasta, an extended-release version of Neupogen. Immunex's 2001 sales for Leukine were $109 million.

Entry into the neutrophil regeneration factor market requires lengthy preclinical and clinical trials, data collection and analysis, and expenditures of significant resources over many years to qualify manufacturing facilities with the Food and Drug Administration (''FDA''). Clinical development and FDA approval can extend from 6 to 10 years and cost over $200 million. The FDA must approve all phases of development, including extensive preclinical and clinical work. The most significant barriers to entry include technical, regulatory, patent, clinical and production barriers. No company can reach advanced stages of development

in the relevant market without: (1) Clinical trial expertise; (2) patent rights sufficient to provide the company with reasonable assurances of freedom to operate; (3) commercial scale product manufacturing expertise and capacity; and (4) regulatory approvals.

The proposed merger of Amgen and Immunex would cause significant anticompetitive effects in the U.S. neutrophil regeneration market by eliminating actual, direct, and substantial competition between the only two firms in the market. As a result, cancer patients that need these drugs would likely pay higher prices for neutrophil regeneration factors.

The proposed Consent Order maintains competition in the market for neutrophil regeneration factors by requiring that Immunex sell its Leukine business to Schering so that Schering can maintain the present competition against Amgen as well as the continued research and development of Leukine for future competition.

TNF Inhibitors

TNF is a cytokine that promotes the inflammation of human tissues. TNF inhibitors may be used to prevent the binding of TNF proteins with TNF receptors, thereby blocking the triggering of the inflammation cascade. TNF inhibitors are used primarily to treat rheumatoid arthritis, Crohn's disease, and psoriatic arthritis, but they also are being examined for a host of other autoimmune diseases. Annual U.S. sales of TNF inhibitors total approximately $1.4 billion.

The market for TNF inhibitors is highly concentrated. Immunex, which makes Enbrel, and Johnson & Johnson (''J&J''), which makes Remicade, are the only companies with TNF inhibitors on the market. In 2001, Immunex sold over $760 million of Enbrel in the United States and Canada, while Remicade accounted for the rest of the market in the United States. There are only three other companies with TNF inhibitors in clinical development in the United States. Amgen has a TNF inhibitor similar to Enbrel in clinical development that it expects to launch in 2005. Abbott recently submitted a Biologic License Application to the FDA for its D2E7 product. Pharmacia and Celltech are jointly in Phase II trials for their TNF inhibitor, CDP870. Additionally, Serono is developing a TNF inhibitor for use in Europe, but it does not possess the patent rights necessary to market the product in the United States.

New entry into the research, development, manufacture, and sale of TNF inhibitors is difficult, expensive, and time-consuming. As with other pharmaceutical markets, entry requires identifying a preclinical compound, performing animal safety tests, clinically developing the product in humans, securing FDA approval of commercial scale production facilities, and obtaining FDA approval to market the drug in the United States. In order to enter the market, a firm must incur substantial sunk costs to research, develop, manufacture, and sell a TNF inhibitor. De novo entry has been estimated to take from 8 to 10 years and cost over $400 million. New entry sufficient to deter or counteract the anticompetitive effects of the proposed merger would not occur in a timely manner.

The proposed merger of Amgen and Immunex would cause significant anticompetitive effects in the U.S. TNF inhibitor market by eliminating potential competition from Amgen's TNF inhibitor in development. Immunex and Amgen are the only two firms that market or are developing soluble TNF receptor products in the United States and two of only five firms that are developing any type of TNF inhibitor for the U.S. market. As a result of the merger, consumers of these drugs would likely pay higher prices and have fewer alternatives for TNF inhibitors for the treatment of rheumatoid arthritis and other diseases.

The proposed Consent Order maintains competition in the TNF inhibitor market by requiring that Amgen license certain patents to Serono, a Swiss biotechnology company with a soluble TNF inhibitor in clinical development that otherwise likely would not be sold in the United States due to blocking patents held by Amgen. This license would assure Serono that it has the freedom of operation necessary to market its TNF inhibitor in the U.S. Amgen retains the rights to pursue development of its TNF inhibitor either as a menotherapy or in combination with an IL–1 inhibitor.

IL–1 Inhibitors

IL–1 is another cytokine that promotes the inflammation of human tissues. IL–1 inhibitors prevent the binding of IL–1protein with IL–1 receptors, thereby blocking the triggering of the inflammation cascade. IL–1 inhibitors are used to treat rheumatoid arthritis.

The market for IL–1 inhibitors is highly concentrated. Amgen's Kineret, approved by the FDA in November of 2001, is the only IL–1 inhibitor on the U.S. market. Sales to date have exceeded $2.4 million. Immunex and Regeneron are the only other companies with IL–1 inhibitors in clinical trials in the United States. Regeneron's development and commercialization of its IL–1 Trap, however, may be delayed or foreclosed by patents owned by Immunex. It appears that Immunex is likely to succeed in its efforts to preclude Regeneron's successful commercializaiton of its IL–1 Trap product through patent infringement litigation for the following reasons: (1) Immunex has indicated that it will seek to block Regeneron by using patent litigation; (2) Regeneron has indicated that such litigation, even were it to yield an outcome favorable to Regeneron, could foreclose its ability to commercialize its IL–1 Trap; and (3) the likelihood of threatened patent litigation by Immunex will jeopardize and could effectively preclude commercialization of Regeneron's IL–1 Trap.

New entry into the research, development, manufacture, and sale of IL–1 inhibitors is difficult, expensive, and time-consuming. As with other pharmaceutical markets, entry requires identifying a preclinical compound, perforning animal safety tests, clinically developing the product in humans, securing FDA approval of commercial scale production facilities, and obtaining FDA approval to market the drug in the United States. In order to enter the market, a firm must incur substantial sunk costs to research, develop, manufacture, and sell an IL–1 inhibitor. *De novo* entry has been estimated to take between 6 to 10 years and cost over $200 million. New entry sufficient to deter or counteract the anticompetitive effects of the merger would not occur in a timely manner.

The proposed merger of Amgen and Immunex would cause significant anticompetitive effects in the U.S. IL–1 inhibitor market by eliminating Amgen's most significant (and likely only) potential competitor, Immunex. By consolidating the IL–1 patents of both companies, Amgen would be more likely to use its combined patents to block Regeneron from marketing an IL–1 inhibitor. Furthermore, Amgen and Immunex are the only companies actively engaged in the development of TNF/IL–1 combination therapies, which may prove more efficacious for the treatment of rheumatoid arthritis in many patients than using either drug alone. The proposed merger, therefore, is likely to lead to unilateral anticompetitive effects in the IL–1 inhibitor market by eliminating potential competition between Amgen and Immunex as well as the ongoing research and development competition between the companies.

The proposed Consent Order remedies the merger's anticompetitive effects by requiring that Immunex license certain patents to Regeneron, given Regeneron the freedom of operation necessary to bring its IL–1 Trap product to the market and compete against Amgen in this market.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the proposed Consent Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–18702 Filed 7–23–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

1. *HHS Acquisition Regulation (HHSAR) Part 342—Contract Administration—0990–0131—Extension with no change*—HHSAR 342.7103 requires reporting information when a cost overrun is anticipated. The information is used to determine if a proposed overrun is reasonable. *Respondents:* State or local governments, business, or other for-profit, non-profit institutions, small business; *Number of respondents:* 215; *Average burden per response:* 20 hours; *Total burden:* 4,300 hours.

2. *HHS Acquisition Regulations (HHSAR Part 333 Disputes and Appeals—0990–0133—Extension with no change*—The Litigation and Claims clause is needed to inform the government of actions filed against government contracts. *Respondents:* State or local governments, business or other for-profit institutions, small business; *Number of respondents:* 86; *Average burden per response:* 30 minutes; *Total burden:* 43 hours.

3. *HHS Acquisition Regulation (HHSAR) Part 332—Contract Financing—0990–0134—Extension with no change*—The requirements of HHSAR Part 332 are needed to ascertain costs associated with certain contracts so as to timely pay contractors. *Respondents:* State or local governments, small businesses; *Number of respondents:* 226; *Average burden per response:* one hours; *Total burden:* 226 hours.

4. *HHS Acquisition Regulation (HHSAR) Part 324—Protection of Privacy and Freedom of Information—0990–0136—Extension with no change*—The confidentiality of information requirements are needed to prevent improper disclosure of confidential data. *Respondents:* State of local governments, business or other for-profit, non-profit institutions, small businesses; *Number of respondents:* 638; *Average burden per response:* 8 hours; *Total burden:* 5,104 hours.

5. *HHS Acquisition Regulation (HHSAR) Part 316—Types of Contracts—0990–0138—Extension with no change— The negotiated Overhead Rate*—Fixed clause is needed since fixed rates are authorized by OMB Circular and a clause is not provided in the Federal Acquisition Regulation (FAR). *Respondents:* non-profit institutions; *Number of respondents:* 520: *Average burden per response:* 10 hours; total burden: 5,200 hours.

6. *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—0990–0169—Extension with no change*—Pre-award, post-award, and subsequent reporting and recordkeeping requirements are necessary to award, monitor, close out and manage grant programs, ensure minimum fiscal control and accountability for Federal funds and deter fraud, waste and abuse. *Respondents:* State and local governments; *Number of respondents:* 4,000; *Average burden per response:* 70 hours; *Total burden:* 280,000 hours.

7. *HHS Acquisition Regulation (HHSAR) Part 370—Special Programs Affecting Acquisition—0990–0129—Extension with no change*—Establishes requirements for the accessibility of meetings, conferences, and seminars to persons with disabilities; establishes requirements for Indian Preference in employment, training and subcontracting opportunities. *Respondents:* State or local governments, businesses or other for-profit, non-profit institutions, small businesses; *Burden Information about Accessibility of Meetings—Annual number of respondents:* 335; *Average burden per response:* 10 hours; *Total annual number of respondents:* 932; *Average burden per response;* 8 hours; *Total annual burden:* 7,456 hours—*Total Burden:* 10,806 hours.

8. *HHS Acquisition Regulation (HHSAR) Part 352—Solicitation Provisions and Contract Clauses—0990–0130—Extension with no change*—The Key Personnel clause in HHSAR 352.27–5 requires contractors to obtain approval before substituting key personnel which are specified in the contract. *Respondents:* State or local governments, businesses or other for-profit, non-profit institutions, small businesses; Total number of *respondents:* 1,921; *Average burden per response:* 2 hours; *Total burden:* 3,842 hours.

Send comments to Cynthia Agents Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: July 16, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–18622 Filed 7–23–02; 8:45 am]

BILLING CODE 4151–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Measures of Patients' Hospital Care Experiences

AGENCY: Agency for Healthcare Reserach and Quality (AHRQ), HHS.

ACTION: Notice of Request for measures.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is soliciting the submission of instruments measuring patients' experience with the

quality of hospital care from researchers, stakeholders and other interested parties. This initiative is in response to the priority established by the Acting Director of AHRQ and the Administrator of the Centers for Medicare & Medicaid Services (CMS), which is to support the development of a standard that would be used nation wide. While CAHPS®, funded by AHRQ, has been accepted as the industry standard for measuring consumers' experiences within the health care system, it does not address patients' experiences within the acute care setting. In response to this need, AHRQ will initiate the process of developing a public domain instrument by reviewing existing instruments that capture the patients' hospital experiences.

DATES: Please subject instruments and supporting information by September 23, 2002. AHRQ will not respond individually to submittrs, but will consider all submitted instruments and publicly report the results of the review of the submissions in aggregate.

ADDRESSES: Submissions should include a brief cover letter, a copy of the instrument for consideration and supporting information as specified under Submission Criteria, below. Submissions may be in the form of a letter or e-mail, preferably with an electronic file in a standard word processing format on a 3½-inch floppy disk or as an e-mail attachment. Responses to this request should be submitted to: Charles Darby, Agency for Healthcare Research and Quality, 6011 Executive Blvd., Suite 200, Rockville, MD 20852, Phone: (301) 594–2050, Fax: (301) 594–2155, E-mail: *cdarby@ahrq.gov.*

To facilitate handling of submissions, please include full information about the instrument developer or contact: (a) name, (b) title, (c) organization, (d) mailing address, (e) telephone number, (f) fax number and (g) e-mail address. Also, please submit a copy of the instrument, evidence that it meets the criteria below, *i.e.,* citation of a peer-reviewed journal article pertaining to the instrument to include the title of the article, author(s), publication year, journal name, volume, issue, and page numbers where article appears and or other applicable evidence. Submitters must also provide a statement of willingness to grant to AHRQ the right to use and authorize others to use submitted measures and their documentation as part of a CAHPSâ-trademarked instrument. This CAHPSâ instrument for patient assessment of hospital care will be made publicly available, free of charge. Please do not use acronyms. Electronic submissions are encouraged.

FOR FURTHER INFORMATION CONTACT: Charles Darby, Center for quality Improvement and Patient Safety, Agency for Healthcare Research and Quality, 6011 Executive Blvd., Suite 200, Rockville, MD 20852; Phone: (301) 594–2050; Fax: (301) 594–2155, e-mail: *cdarby@ahrq.gov.*

Submission Criteria

Instruments submitted should focus on acute, inpatient stays for medical, surgical care, OB/GYN and/or pediatric care. Measures submitted must meet these criteria to be considered: capture the patients' experience of care in acute care and/or hospital settings; demonstrate a high degree of reliability and validity; and have been used widely, not just in one or two research studies or local hospital settings. Submitters willingness to grant to AHRQ the right to use and authorize others to use the instrument means that the CAHPS® trademark will be applied to a new instrument combining the best features of all the submissions as well as any ideas that may develop from reviewing them, to ensure free access to the instrument, and free access to the instrument's supportive/administrative information. AHRQ, in collaboration with CAHPS grantees, will evaluate all submitted instruments and select one or more either in whole or in part for testing and, if required, additional modification. AHRQ will assume responsibility for the final measure set as well as any future modifications to the instrument.

The finalized instrument will bear the CAHPS® trademark and it will be made freely available for use by all interested parties. However, as a matter of quality control, there will be warnings that the CAHPS® identification may not be used if any changes are made to the instrument or final measure set without review and permission of the agency. Each submission should include the following information: the name of the instrument, whether the instrument is disease or condition specific, domain, language(s) the instrument is available in, evidence of cultural/cross group comparability, if any, instrument reliability (internal consistency, test-retest, etc.) validity (content, construct, criterion-related), response rates, methods and results of cognitive testing and field-testing and description of sampling strategies and data collection protocols, including such elements as mode of administration, use of advance letters, timing and frequencies of contacts. In addition, a list of hospitals in which the instrument has been fielded or counts of the number of hospitals by state or region, in which the survey has been and/or is being used should also be included in the submission materials. Submission of copies of existing report formats developed to disclose findings to consumers and providers is desirable, but not required. Additionally, information about existing database(s) for the instrument(s) submitted is helpful, but not required for submission. Evidence of the criteria should be demonstrated through submission of peer-reviewed journal article(s) or through the best evidence available at the time of submission.

SUPPLEMENTARY INFORMATION:

Background

AHRQ is a leader in developing and testing instruments for measuring consumer experience within the healthcare system of the United States as evidenced by the development of CAHPS®, formerly the Consumer Assessment of Health Plans, which provides information on health plan quality to consumers and purchasers alike. While CAPHS® is highly regarded within the industry and provides valuable information; it does not address patients' experience within an acute care setting. Standardization of measures is the basis for the development of the CAHPS® system, and is essential for meaningful comparison of performance of hospitals and acute care health systems. Use of a standardized measure of patient experience in hospital settings provides several benefits including: comparable information across hospitals for the public about the quality of care from the patient's perspective; data-based recommendations for quality improvement efforts and a data base to stimulate research in this area.

Leaders in the health care sector have called for a response to these pressing needs. In ''Crossing the Quality Chasm,'' the National Institute of Medicine (IOM) established patient-centered care as one of the industry's six aims for quality improvement. The dimensions of patient-centered care include: respect for patients' values, preferences, and expressed needs; coordination and integration of care; information, communication, and education; physical comfort; emotional support, *i.e.,* relieving fear and anxiety; involvement of family and friends; continuity and transition; and access to care (2001).

The measurement of these dimensions will require a standardized instrument that produces reliable and valid results.

Furthermore, the National Quality Forum (NQF) has cited the need for further research and development of suitable performance measures to evaluate and improve the quality of care in the hospital setting. Among the many priorities cited by the NQF in this area, the need to measure patient experiences with inpatient care is crucial.

In an effect to address the concerns of the industry, the Acting Director of AHRQ and the Administrator of the Centers for Medicare & Medicaid Services (CMS) have established a priority to develop a standard for measuring and the public reporting of patient experiences in the acute care setting.

AHRQ, through a collaborative process with CMS and other Federal agencies, as well as other stakeholders, has initiated the process for this project. The steps to advance this initiative include:

• *Stakeholder Meetings:* A series of public meetings will be held to identify the issues, concerns and interests of the healthcare community. Summaries of all meetings will be posted on the AHRQ Website: *http//www.ahrq.gov/qual/cahpsix.htm.*

• *Sponsorship:* Identify potential sponsors who will fund, assist in development and periodic revisions, and ultimately help support the process for implementing and maintaining this standardized instrument.

• *Research Plan:* The process by which measures will be defined and applicable instruments identified. Instruments submitted will be evaluated to determine if they meet the measurement needs and to identify whether additional measure development is required. Once consensus among AHRQ and the CAHPS Grantees on the instrument is achieved, and the instrument testing is concluded, the resulting work will be readily available free of charge to all prospective users.

• *Implementation Plan:* A description of the recommended or required process to implement the standardized instrument will also be readily available including information related to data collection, analysis, and public reporting.

Dated: July 18, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–18710 Filed 7–23–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites of the Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period extending through July 7, 2004.

For further information, contact Burma Burch, CDC/ATSDR Committee Management Officer, Centers for Disease Control and Prevention of the Department of Health and Human Services, 1600 Clifton Road, NE., MS E72, Atlanta, Georgia 30333. Telephone (404) 498–0090, or fax (404) 498–0011.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 18, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–18669 Filed 7–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10064]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Minimum Data Set (MDS) for Swing Bed Hospitals and Supporting Regulations in 42 CFR, Sections 413.337 and 483.20; *Form No.:* CMS–10064 (OMB# 0938–0872); *Use:* We are requesting re-approval of resident assessment information that swing bed hospitals are required to submit as described at 42 CFR 483.20 in the manner necessary to administer the payment rate methodology described in 42 CFR 413.337; *Frequency:* Other: Days 5, 14, 30, 60 & 90 of stay; *Affected Public:* Not-for-Profit Institutions, and State, Local or Tribal Government; *Number of Respondents:* 1,250; *Total Annual Responses:* 156,480; *Total Annual Hours:* 132,360.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, CMS–10064, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 16, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–18653 Filed 7–23–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–460]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Participating Physician or Supplier Agreement, CMS–460; *Form No.:* CMS–460 (OMB# 0938–0373); *Use:* The CMS–460 is completed by nonparticipating physicians and supplier if they choose to participate in Medicare Part B. By signing the agreement, the physician or supplier agrees to take assignment on all Medicare claims. To take assignment means to accept the Medicare allowed amount as payment in full for the services they furnish and to charge the beneficiary no more than the deductible and coinsurance for the covered service. In exchange for signing the agreement, the physician or supplier receives a significant number of program benefits not available to nonparticipating physicians and suppliers. The information is needed to know to whom to provide these benefits; *Frequency:* Once, unless re-enrolled; *Affected Public:* Business or other for-profit, and Individuals or Households; *Number of Respondents:* 6,250; *Total Annual Responses:* 6,250; *Total Annual Hours:* 1,563.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 16, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–18651 Filed 7–23–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–106]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Criteria for Medicare Coverage of Heart Transplants; *Form No.:* CMS–R–106 (OMB# 0938–0490); *Use:* Medicare Participating Hospitals must file an application to be approved for coverage and payment of heart transplants performed on Medicare beneficiaries. This information collection specifies the criteria for approval.; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 4; *Total Annual Responses:* 4; *Total Annual Hours:* 400.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 16, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–18652 Filed 7–23–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–1513]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicare/Medicaid Disclosure of Ownership and Control Interest Statement and Supporting Regulations in 42 CFR 420.200–.206, 455.100–.106 and 45 CFR 228.72–.73; *Form No.:* HCFA–1513 (OMB# 0938–0086); *Use:* The Medicare/Medicaid Disclosure of Ownership and Control Interest Statement must be used by State agencies and HCFA regional offices to determine whether providers meet the eligibility requirements for Titles 18 and 19 (Medicare and Medicaid) and for grants under Titles V and XX. Review of ownership and control is particularly necessary to prohibit ownership and control for individuals excluded under Federal fraud statutes; *Frequency:* Other (every 1 to 3 years); *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 92,000; *Total Annual Responses:* 92,000; *Total Annual Hours:* 46,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 17, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–18720 Filed 7–23–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–381]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Identification of Extension Units of Outpatient Physical Therapy (OPT) and Outpatient Speech Pathology (OSP) Providers and Supporting Regulations in 42 CFR 485.701–485.729; *Form No.:* CMS–381 (OMB# 0938–0273); *Use:* When an OPT/OSP provider furnishes services to locations other than their already certified premises (extension locations), those premises are considered to be part of the OPT/OSP provider and are subject to the same Medicare regulations as the primary location. This form is used by the State survey agencies and by the CMS regional offices to identify and monitor extension locations to ensure their compliance with Federal requirements; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 2,833; *Total Annual Responses:* 2,833; *Total Annual Hours:* 708.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 16, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–18721 Filed 7–23–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 23, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management

Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Texas Parks and Wildlife Department, Austin, Texas, PRT–057900.

The applicant requests a permit to import biological samples taken from wild specimens of black-capped vireo (*Vireo atricapillus*) for the purpose of scientific research.

PRT–059591

Applicant: Adrian M. Meyer, Beloit, KS.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–059045

Applicant: Elmer E. Mowbray, La Belle, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: July 12, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–18694 Filed 7–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 23, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–059006

Applicant: Disney's Animal Kingdom, Lake Buena Vista, FL.

The applicant requests a permit to import two male captive-born cheetah (*Acinonyx jubatus*) from the Wassenaar Wildlife Breeding Centre, Wassenaar, The Netherlands, for the purpose of enhancement of the survival of the species through captive propagation.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: July 5, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–18695 Filed 7–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On March 20, 2002, a notice was published in the **Federal Register** (67 FR 13003), that an application had been filed with the Fish and Wildlife Service by John F. Wilhelm for a permit (PRT–053629) to import one polar bear taken from the Southern Beaufort Sea population, Canada, for personal use.

Notice is hereby given that on June 24, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Dated: July 12, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–18693 Filed 7–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for approval.

SUMMARY: The public is invited to comment on the following application for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

DATES: Written data, comments, or requests for a copy of this complete application must be received by August 23, 2002.

ADDRESSES: Written data, comments, or requests for a copy of this complete application should be sent to the Chief, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Andrea Gaski, Chief, Branch of CITES Operations, Division of Management Authority, at 703–358–2095.

SUPPLEMENTARY INFORMATION:

Applicant: Ms. Cathy S. MacKay of Redding, California.

The applicant wishes to establish a cooperative breeding program for silver-eared mesia (*Leiothrix argentauris*) and red-billed leiothrix (*Leiothrix lutea*). The applicant wishes to be an active participant in this program along with eight other individuals. The National Finch and Softbill Society has agreed to assume oversight responsibility of this program if it is approved. Documents and other information submitted with this application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice.

Dated: July 11, 2002.

Mark Albert,

Acting Chief, Branch of CITES Operations, Division of Management Authority.

[FR Doc. 02–18692 Filed 7–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–100–6334–AA; GP2–0195A]

Roseburg District Bureau of Land Management (BLM) Resource Advisory Committee (RAC): Correction, Cancellation of Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings; cancellation.

SUMMARY: On May 20, 2002, the **Federal Register** published the dates of the Roseburg District BLM Resource Advisory Committee Meetings. The following meeting dates have been cancelled: July 22, 2002, July 29, 2002, August 13, 2002, August 19, 2002, and August 26, 2002.

SUPPLEMENTARY INFORMATION: The RAC meets in accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Roseburg District BLM Resource Advisory Committee may be obtained from E. Lynn Burkett, Public Affairs Officer, Roseburg District Office, 777 Garden Valley Blvd, Roseburg, Oregon 97470, or *elynn_burkett@blm.gov*, or on the web at *http://www.or.blm.gov*.

Dated: July 19, 2002.

Michael H. Schwartz,

Regulatory Affairs Group Manager.

[FR Doc. 02–18802 Filed 7–22–02; 10:53 am]

BILLING CODE 4310–33–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,710]

Alpha Carb Enterprises, Leechburg, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 3, 2002, the company, requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on April 29, 2002 and published in the **Federal Register** on May 17, 2002 (67 FR 35143).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Alpha Carb Enterprises, Leechburg, Pennsylvania engaged in the production of steel and tungsten carbide progressive dies, was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of steel and tungsten carbide progressive dies. The survey revealed that none of the customers increased their import purchases of steel and tungsten carbide progressive dies, while reducing their purchases from the subject firm during the relevant period. The subject firm did not import steel and tungsten carbide progressive dies during the relevant period.

The petitioner alleges that they believe the TAA decision was based on the company being an importer of steel and tungsten carbide progressive dies, rather than a manufacturer of steel and tungsten carbide progressive dies.

A review of the initial investigation conducted for the subject plant workers treated the worker group as production workers engaged in activities related to the production of steel and tungsten carbide progressive dies and not importers of steel and tungsten carbide progressive dies.

The petitioner further believes that their customers are importing steel and tungsten carbide progressive dies from overseas, resulting in lost business at the subject plant.

A review of the initial investigation shows that none of the respondents increased their purchases of steel and tungsten carbide progressive dies, while decreasing their purchases from the subject firm during the relevant period.

The petitioner also alleges that a local competitor was granted TAA eligibility and strongly believes they should be granted TAA eligibility based on that event.

As already indicated, the ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The TAA eligibility of a competitor does not show the direct impact of imports contributing to the subject plant layoffs and therefore is not relevant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify

reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 12th day of July, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18642 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,255]

American Greetings Corporation, Corbin, KY; Notice of Negative Determination Regarding Application for Reconsideration; A Corrected Republication in Full

A corrected republication in full is necessary for the Notice of Negative Determination Regarding Application for Reconsideration applicable to workers of American Greetings Corporation, Corbin, Kentucky, TA–W–41,455. The notice was published in the **Federal Register** on July 9, 2002 (FR 67 45546), FR Document 02–17147. The word ''not'' was inadvertently omitted from the decision, and this correction is issued to insert the word ''not'' in the third paragraph, 4th line between the words ''did'' and ''contribute''. The notice is republished as follows:

By application received on June 6, 2002 and June 7, 2002, a worker and the Teamsters, Local 89, respectively, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 13, 2002, and published in the **Federal Register** on June 4, 2002 (67 FR 38521).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of American Greetings Corporation, Corbin, Kentucky was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. Increased imports did not contribute importantly to worker separations. The denial was based on Corbin, Kentucky production of printed greeting card sheets being consolidated with another American Greetings Corporation domestic production facility. The company did not import printed greeting card sheets during the relevant period.

The petitioners allege that American Greetings Corporation has been forced to restructure the company in order to cut costs, which resulted in lost jobs at the Corbin plant over a three year period, leading to the final closing of the subject plant. The petitioners further allege that the jobs lost at the Corbin plant is the result of American Greetings moving manufacturing production (candles, party goods, print greeting cards) from the Corbin plant to China, Mexico, Taiwan and Hong Kong. A copy of a label attached to the petitioner(s) request depicts that a product produced in China was imported directly to American Greetings Corp., Corbin, Kentucky.

A review of the initial decision and recent clarification by the company indicate there was no decline in the firm's customer base. Any declines in plant sales or production (party goods, gift wrap and bows, candles, printed greeting card sheets) are due to shifts in plant production to other domestic locations. That is, virtually all plant production was shifted to other domestic sources, except for a small portion of printed greeting card sheets that were ordered from a foreign source and scheduled to enter the United States beyond the relevant period of the investigation. In any event, the amount of printed greeting card sheets to be imported is relatively low and would not be considered a major contributing factor to the layoffs at the subject firm.

Further review and contact with the company shows that the preponderance in the declines in employment at the subject plant is related to other factors unrelated to imported products ''like or directly competitive'' with what the subject plant produced. That is, internet card competition and cost cutting measures such as the elimination of some high cost product lines and the consolidation of subject plant production to other affiliated domestic locations to cut costs are the dominant factors leading to the layoffs at the subject plant.

The Department contacted the company regarding a label attached and labels referenced in the petitioner's request for reconsideration. The company indicated that some of the products produced by the subject plant have been intermittently imported, but the amount of each type of product imported was negligible during the relevant period.

In a further allegation by the petitioner, it is indicated that the subject plant candle production was shifted to China and imported back to the United States. The company indicated candles imported back to the United States were negligible during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 21st day of June 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18634 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,516, TA–W–40,516C, and TA–W–40,516D]

Bayer Clothing Group, Inc., Target Square Facility, Clearfield, PA; Macclenny Products, Lake Butler Facility, Lake Butler, Florida; Macclenny, FL Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 7, 2002, applicable to workers of Bayer Clothing Group, Inc., Target Square Facility, Clearfield, Pennsylvania. The notice was published in the **Federal Register** on May 17, 2002 (67 FR 35141).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of men's sports coats, suit coats, blazers and slacks.

New information shows that worker separations occurred at the Macclenny Products, Lake Butler Facility, Lake Butler, Florida and Macclenny Products,

Macclenny, Florida locations of Bayer Clothing Group, Inc. The Lake Butler, Florida location which closed in April, 2002 and the Macclenny, Florida location provided warehousing and distribution services for Bayer Clothing Group, Inc. production facilities including Clearfield, Pennsylvania.

Accordingly, the Department is amending the certification to cover the workers of Bayer Clothing Group, Inc., Macclenny Products, Lake Butler, Florida and Macclenny, Florida.

The intent of the Department's certification is to include all workers of Bayer Clothing Group, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,516 is hereby issued as follows:

All workers of Bayer Clothing Group, Inc., Target Square Facility, Clearfield, Pennsylvania (TA–W–40,516) who became totally or partially separated from employment on or after January 22, 2002, through May 7, 2004, and Bayer Clothing Group, Inc., Macclenny Products, Lake Butler Facility, Lake Butler, Florida (TA–W–40,516C) and Bayer Clothing Group, Inc., Macclenny Products, Macclenny, Florida (TA–W–40,516D) who became totally or partially separated from employment on or after December 4, 2000, through May 7, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18631 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,539]

CECO Door Products, Assa Abloy Door Group LLC, Harlingen, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the U.S. Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 29, 2002, applicable to workers of CECO Door Products, Harlingen, Texas. The notice was published in the **Federal Register** on June 11, 2002 (67 FR 40006).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of metal doors and frames.

Company information shows that Assa Abloy Door Group LLC is the parent firm of CECO Door Products located in Harlingen, Texas. New information provided by the State shows that some workers separated from employment at CECO Door Products had their wages reported under a separate unemployment insurance (UI) tax account for Assa Abloy Door Group LLC also located in Harlingen, Texas.

Based on these findings, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of CECO Door Products who were adversely affected by increased imports of metal doors and frames.

The amended notice applicable to TA–W–41,539 is hereby issued as follows:

All workers of CECO Door Products and Assa Abloy Door Group LLC, Harlingen, Texas, who became totally or partially separated from employment on or after April 22, 2001, through May 29, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 16th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18638 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,459]

Dave Goldberg, Inc., Long Island City, NY; Notice of Termination of Certification

Pursuant to Section 223 of the Trade Act of 1974, on May 22, 2002, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance applicable to workers of the subject firm. The notice was published in the **Federal Register** on June 11, 2002 (67 FR 40004).

The State agency requested that the Department review the certification for workers of the subject firm engaged in the production of swimwear. New information shows that Dave Goldberg, Inc. is the parent company of Tama Sportswear located in Long Island City, New York. The Tama Sportswear certification, TA–W–40,569, was amended to include workers whose wages are reported to the Unemployment Insurance tax account for Dave Goldberg, Inc.

Consequently, continuance of this certification would serve no purpose and the certification is terminated.

Signed in Washington, DC this 15th day of July 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18635 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,899, TA–W–40,899A, and TA–W–40,899B]

E.J. Footwear LLC, Blairsville, GA; E.J. Footwear LLC, Franklin, TN; E.J. Footwear LLC, Vestal, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 3, 2002, applicable to workers of E.J. Footwear LLC, Blairsville, Georgia. The notice was published in the **Federal Register** on April 17, 2002 (67 FR 18923).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of work and occupational footwear.

The company reports that worker separations occurred at the Franklin, Tennessee and Vestal, New York facilities of the subject firm. These locations provide advertising, engineering and administrative support function services directly for the Blairsville, Georgia production facility.

Based on these findings, the Department is amending the certification to include workers of E.J. Footwear LLC, Franklin, Tennessee and Vestal, New York.

The intent of the Department's certification is to include all workers of E.J. Footwear LLC who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,899 is hereby issued as follows:

All workers of E.J. Footwear LLC, Blairsville, Georgia (TA–W–40,899), E.J. Footwear LLC, Franklin, Tennessee (TA–W–40,899A) and E.J. Footwear LLC, Vestal, New York (TA–W–40,899B) who became totally or partially separated from employment on or

after October 24, 2000, through April 3, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division, of Trade Adjustment Assistance.

[FR Doc. 02–18640 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,081A]

Goss Graphic Systems, Inc., Westmont, IL., and Operating at Various Field Offices in the Following States: TA–W–40,081B, Arizona; TA–W–40,081H, New Jersey; TA–W–40,081C, California; TA–W–40,081I, North Carolina; TA–W–40,081D, Colorado; TA–W–40,081J, Pennsylvania; TA–W–40,081E, Florida; TA–W–40,081K, Texas; TA–W–40,081F, Indiana; TA–W–41,081L, Wisconsin; TA–W–40,081G, Missouri; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 31, 2001, applicable to workers of Goss Graphic Systems, Inc., located in Westmont, Illinois. The notice was published in the **Federal Register** on November 9, 2001 (66 FR 56712).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information provided by the company show that workers in various States provide support services related to the production of printing presses at Goss Graphic Systems, Inc. The workers' wages for Goss Graphic Systems employees in Arizona, California, Colorado, Florida, Indiana, Missouri, New Jersey, North Carolina, Pennsylvania, Texas, and Wisconsin are paid by Goss Graphic Systems, Inc., Westmont, Illinois.

The intent of the certification is to provide coverage to all workers of the subject firm impacted by increased imports of printing presses. Therefore, the Department is amending the certification to include workers of the firm providing support services at various locations outside Illinois.

The amended notice applicable to TA–W–40,081A is hereby issued as follows:

All workers of Goss Graphic Systems, Inc., Westmont, Illinois, including workers at various field offices located in Arizona, California, Colorado, Florida, Indiana, Missouri, New Jersey, North Carolina, Pennsylvania, Texas, Wisconsin, who became totally or partially separated from employment on or after September 1, 2000, through October 31, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 16th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18630 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,834]

Levolor Kirsch Window Fashions, Levolor Home Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 8, 2002, applicable to workers of Levolor Kirsch Window Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, California. The notice was published in the **Federal Register** on April 24, 2002 (67 FR 20166).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wood and faux wood window coverings.

New information shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Levolor Home Fashions.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Levolor Kirsch Window Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, California who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,834 is hereby issued as follows:

All workers of Levolor Kirsch Window Fashions, Levolor Home Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, California, engaged in the production of wood and faux wood window coverings, who became totally or partially separated from employment on or after January 28, 2001, through April 8, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18641 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,327]

MeadWestvaco, Including Leased Workers of Bancroft Contracting, Denali Fire Protection, WF Porter, Mechanical Services, Cinbro Contracting, ES Boulos, CP Technologies and Arbon Equipment, Rumford, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 21, 2002, applicable to all workers of MeadWestvaco, located in Rumford, Maine. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The State reports that it was the company's intent to include leased workers producing coated groundwood paper and freesheet paper and market pulp at the Rumford mill. New information provided to the Department by the State and a company official show that MeadWestvaco leased employees to produce articles at the Rumford, Maine mill. Worker separations were experienced at Bancroft Contracting, Denali Fire Protection, WF Porter, Mechanical Services, Cinbro Contracting, ES Boulos, CP Technologies, and Arbon Equipment as a result of worker separations at MeadWestvaco.

Based on this new information, the Department is amending the certification to include leased workers producing coated paper and pulp at the Rumford mill. The intent of the Department's certification is to include all workers of MeadWestvaco adversely affected by imports.

The amended notice applicable to TA–W–41,327 is hereby issued as follows:

All workers of MeadWestvaco, Rumford, Maine, and leased workers of Bancroft Contracting, Denali Fire Protection, WF Porter, Mechanical Services, Cinbro Contracting, ES Boulos, CP Technologies, and Arbon Equipment engaged in employment related to the production of coated groundwood and freesheet paper and market pulp at MeadWestvaco, Rumford, Maine, who became totally or partially separated from employment on or after March 22, 2001, through June 21, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18639 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,850]

Newbold Corporation, Rocky Mount, VA; Notice of Termination of Certification

This notice terminates the Determination Regarding Eligibility to Apply For Worker Adjustment Assistance issued by the Department on May 21, 2002, applicable to workers of NewBold Corporation, Rocky Mount, Virginia, engaged in employment related to the production of retail imprinter machines. The notice was published in the **Federal Register** on June 11, 2002 (67 FR 40003–40005).

At the request of the State agency, the Department reviewed the worker certification. Findings show that on January 9, 2002, all workers of NewBold Corporation, Rocky Mount, Virginia, were certified eligible to apply for Worker Adjustment Assistance, TA–W–39,448. All workers separated from employment with the subject firm on or after May 28, 2000, through January 9, 2004, are eligible to apply for worker adjustment assistance program benefits.

On January 9, 2002, the Department issued a certification of eligibility applicable to all workers at NewBold Corporation, Rocky Mount, Virginia, TA–W–39,448. Workers separated from employment with the subject firm on or after May 28, 2000, through January 9, 2004, are eligible to apply for worker adjustment assistance program benefits.

Based on this new information, the Department is terminating the certification for petition number TA–W–40,850. Further coverage for workers under this certification would serve no purpose, and the certification has been terminated.

Signed at Washington, DC, this 14th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18633 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,590]

Oxford Industries, Oxford Womenswear, New York, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 28, 2002 in response to a worker petition which was filed on behalf of workers at Oxford Industries, Oxford Womenswear, New York, New York.

An active certification covering the petitioning group of workers is already in effect (TA–W–39,764A, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18636 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,764 and TA–W–39,764A]

Oxford Industries, Inc., Oxford of Columbia, Columbia, SC, and Oxford Industries, Inc., Oxford Womenswear, New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 30, 2001, applicable to workers of Oxford Industries, Inc., Oxford of Columbia, Columbia, South Carolina. The notice was published in the **Federal Register** on September 11, 2001 (66 FR 47241).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the New York, New York location of the subject firm. The New York, New York location provides administrative services supporting the production of ladies' apparel such as pants, skirts jackets and blouses at the Columbia, South Carolina facility of the subject firm.

Based on these findings, the Department is amending the certification to include workers of Oxford Industries, Oxford Womenswear, New York, New York.

The intent of the Department's certification is to include all workers of Oxford Industries, Oxford of Columbia who were adversely affected by increased imports.

The amended notice applicable to TA–W–39,764 is hereby issued as follows:

All workers of Oxford Industries, Inc., Oxford of Columbia, Columbia, South Carolina (TA–W–39,764) and Oxford Industries, Oxford Womenswear, New York, New York (TA–W–39,764A) who became totally or partially separated from employment on or after August 27, 2001, through August 30, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division, of Trade Adjustment Assistance.

[FR Doc. 02–18629 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,255]

Potlatch Corporation, Honeywell Corporation, Minnesota Pulp and Paper Division, Brainerd, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a

Certification of Eligibility To Apply for Worker Adjustment Assistance on February 20, 2002, applicable to workers of Potlatch Corporation, Minnesota Pulp and Paper Division, Brainerd, Minnesota. The notice was published in the **Federal Register** on February 28, 2002 (67 FR 9325).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of high line coated printed paper.

New information shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Honeywell Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Potlatch Corporation, Minnesota Pulp and Paper Division, Brainerd, Minnesota who were adversely affected by increased imports.

The amended notice applicable to TA-W–39,255 is hereby issued as follows:

All workers of Potlatch Corporation, Honeywell Corporation, Minnesota Pulp and Paper Division, Brainerd, Minnesota, who became totally or partially separated from employment on or after May 1, 2000, through February 20, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 16th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18644 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,498]

Precision Twist Drill Co., Rhinelander, WI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 10, 2002, the United Steelworkers of America, District-2, Local 9408 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 7, 2002, and published in the **Federal Register** on May 17, 2002 (67 FR 35140).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Precision Twist Drill Co., Rhinelander, Wisconsin was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported twist drill bits, while decreasing their purchases from the subject firm during the relevant period. The investigation also revealed that Precision Twist Drill Co., Rhinelander, Wisconsin did not import articles ''like or directly competitive'' with the products produced at the subject plant. The separations at the subject plant were due to a transfer of plant production to another domestic facility.

The petitioner supplied additional information based on a company announcement dated April 25, 2002 indicating that the Rhinelander facility would close down and approximately two-thirds of the blank drill bit production would be manufactured overseas.

Based on data supplied during the initial investigation and further contact with the company, the shifts in plant production did not occur during the relevant period of the investigation. The shift in the production of blank drill bits to foreign sources began during July 2002. Any potential future company imports of blank drill bits are beyond the relevant period of the initial investigation.

The petitioner further alleges the subject plant once manufactured drills for Boeing and that production was shifted to Crystal Lake, Illinois. Since then, the company indicated they would shift that production to Brazil.

Recent information provided by the company indicates that the product (special drill bits) produced for Boeing was never produced at the subject plant. Therefore, the shift in production to Brazil by the Crystal Lake plant is not a relevant factor that is considered in meeting the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 11th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18643 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,569]

Tama Sportswear, a/k/a Dave Goldberg, Inc., Long Island City, NY Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 25, 2002, applicable to all workers of Tama Sportswear, located in Long Island City, New York. The notice was published in the **Federal Register** on May 2, 2002 (67 FR 22113).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of women's swimwear. New information provided by the State and a company official show that Dave Goldberg is the parent company of Tama Sportswear. Some workers wages are reported to the Unemployment Insurance tax account for Dave Goldberg, Inc.

The intent of the certification is to provide coverage to all workers of the subject firm impacted by increased imports of swimwear. Therefore, the Department is amending the certification to include all workers of the firm whose wages are reported to Dave Goldberg, Inc.

The amended notice applicable to TA–W–40,569 is hereby issued as follows:

All workers of Tama Sportswear, also known as Dave Goldberg, Inc., Long Island City, New York, who became totally or partially separated from employment on or after November 6, 2000, through April 25, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 15th day of July 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18632 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,495 and TA–W–38,495C]

VF Imagewear (East), Inc., Martinsville, VA, Including Employees of VF Imagewear (East), Martinsville, VA, Located in Golden Valley, MN, Dallas, TX, Portland, OR, and Salisbury, MD, and VF Imagewear (East), Inc., Brownsville, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 17, 2001, applicable to workers of VF Imagewear (East), Inc., Martinsville, Virginia. The notice was published in the **Federal Register** on May 3, 2001 (66 FR 22262). The certification was amended on December 14, 2001 to include employees of the Martinsville, Virginia facility of the subject firm located in Golden Valley, Minnesota, Dallas, Texas, Portland, Oregon and Salisbury, Maryland.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations have occurred at The Brownsville, Texas location of VF Imagewear (East), Inc. The Brownsville, Texas workers provide warehousing and distribution services for the subject firm's production facilities, including Martinsville, Virginia.

Accordingly, the Department is amending the certification to cover the workers of VF Imagewear (East), Inc., Brownsville, Texas.

The intent of the Department's certification is to include all workers of VF Imagewear (East), Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–38,495 is hereby issued as follows:

All workers of VF Imagewear (East), Inc., Martinsville, Virginia, including workers of the Martinsville, Virginia facility located in Golden Valley, Minnesota, Dallas, Texas, Portland, Oregon and Salisbury, Maryland (TA–W–38,495) and VF Imagewear (East), Inc., Brownsville, Texas (TA–W–38,495C) who became totally or partially separated from employment on or after December 13, 1999, through April 17, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 3rd day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18628 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—05849]

Levolor Kirsch Window Fashions, Levolor Home Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, CA; Amended Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, chapter 2, title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on April 8, 2002, applicable to workers of Levolor Kirsch Window Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, California. The notice published in the **Federal Register** on April 24, 2002 (67 FR 20166).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wood and faux wood coverings.

New information shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Levolor Home Fashions.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Levolor Kirsch Window Fashions, Wood and Faux Wood Customer Window Coverings Department, Westminster, California who were adversely affected by a shift of production to Mexico.

The amended notice applicable to NAFTA—05849 is hereby issued as follows:

All workers of Levolor Kirsch Window Fashions, Levolor Home Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, California, engaged in the production of wood and Faux wood window coverings, who became totally or partially separated from employment on or after February 4, 2001, through April 8, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18637 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs; Notice of Reinstatement of Chicago Messenger Service

AGENCY: Office of Federal Contract Compliance Programs, Department of Labor.

ACTION: Notice of reinstatement, Chicago Messenger Service.

SUMMARY: This notice advises that Chicago Messenger Service has been reinstated as an eligible bidder on Federal contracts and subcontracts. For further information, contact Charles E. James, Sr., Deputy Assistant Secretary for Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C–3325, Washington, D.C. 20210, (202–693–0101).

SUPPLEMENTARY INFORMATION: Chicago Messenger Service, Chicago, Illinois, is, as of this date, reinstated as an eligible bidder on Federal contracts and subcontracts.

Signed: July 15, 2002, Washington, D.C.

Charles E. James, Sr.

Deputy Assistant Secretary.

[FR Doc. 02–18627 Filed 7–23–02; 8:45 am]

BILLING CODE 4510–CM–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–090]

National Environmental Policy Act; Mars Exploration Rover-2003 Project

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of draft environmental impact statement (DEIS) for implementation of the Mars Exploration Rover (MER)–2003 Project.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216, subpart 1216.3), NASA has prepared and issued a DEIS for the MER–2003 project. The DEIS addresses the potential environmental impacts associated with continuing the preparations for and implementing the MER–2003 project. The purpose of this proposal is to perform exploration of the surface of Mars.

The project is planned to consist of two missions, each involving identical rover spacecraft. NASA proposes to launch the first mission from Cape Canaveral Air Force Station (CCAFS), Florida, in May or June 2003, on a Delta II 7925, and the second mission from CCAFS in June or July 2003, on a Delta II 7925 Heavy. Each rover would include two small radioactive sources for instrument calibration and would use up to eleven radioisotope heater units (RHU) for thermal control.

DATES: Interested parties are invited to submit comments on environmental concerns on or before September 9, 2002, or 45 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the MER–2003 project DEIS, whichever is later.

ADDRESSES: Comments submitted via first class, registered, or certified mail should be addressed to David Lavery, Office of Space Science, Mail Code SM, NASA Headquarters, Washington, DC 20546–0001. Comments submitted via express mail, a commercial deliverer, or courier service should be addressed to David Lavery, Office of Space Science, Mail Code SM, Attn: Receiving & Inspection (Rear of Building), NASA Headquarters, 300 E Street SW., Washington, DC 20024–3210. While hard copy comments are preferred, comments by electronic mail may be sent to *marsnepa@hq.nasa.gov*. The DEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546.

(b) Spaceport U.S.A., Room 2001, John F. Kennedy Space Center, FL 32899. Please call Lisa Fowler at 321–867–2201 so that arrangements can be made.

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800

Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

In addition, the DEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(d) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–1181).

(e) NASA, Dryden Flight Research Center, P.O. Box 273, Edwards, CA 93523 (661–276–2704).

(f) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

(g) NASA, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771 (301–286–0730).

(h) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(i) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497).

(j) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–2030).

(k) NASA, Stennis Space Center, MS 39529 (228–688–2164).

Limited hard copies of the DEIS are available, on a first request basis, by contacting David Lavery at the address or telephone number indicated herein. The DEIS also is available in Acrobat® format at *http://spacescience.nasa.gov/admin/pubs/mereis/index.htm*.

FOR FURTHER INFORMATION CONTACT: David Lavery, 202–358–4800; electronic mail (marsnepa@hq.nasa.gov).

SUPPLEMENTARY INFORMATION: The MER–2003 project is part of a series of missions to characterize Mars' atmosphere, geologic history, climate, and the relationship to Earth's climate change process. The two missions of the MER–2003 project aim to determine what resources Mars provides for future exploration, and to search for evidence of past and present life. These two missions would continue the intense study of local areas of the surface via identical rover spacecraft. The two rovers would separately explore two different locations on Mars. Operation of the rovers and their science instruments would also benefit the planning and design of future missions by demonstrating the capabilities for long-range travel by mobile science platforms to validate long-lived, long-distance rover technologies; demonstrate complex science operations through the simultaneous use of multiple mobile laboratories; and validate the standards, protocols, and capabilities of the international Mars communications infrastructure.

The proposed action consists of continuing preparations for and implementing the MER–2003 project. The first mission (MER–A) would be launched on a Delta II 7925 from CCAFS in May or June 2003. The second mission (MER–B) would be launched on a Delta II 7925 Heavy from CCAFS in June or July 2003. The 2003 launch opportunity represents the best opportunity for a surface mission to Mars in the next twenty years. Programmatic issues (*e.g.*, changes in NASA priorities or unforeseen circumstances) could necessitate modification to the mission objectives and timing. Such modifications could result in the need to launch one mission in 2003, and a second mission at a later launch opportunity or not at all. Accordingly, the only alternative that was evaluated is the No Action alternative.

For the MER–2003 missions, the potentially affected environment for normal launches includes the area at and in the vicinity of the launch site, CCAFS in Florida. The environmental impacts of normal launches of the two missions for the proposed action would be associated principally with the exhaust emissions from each of the Delta II launch vehicles. These effects would include short-term impacts on air quality within the exhaust cloud and near the launch pads, and the potential for acidic deposition on the vegetation and surface water bodies at and near the launch complex, particularly if rain occurs shortly after launch.

A concern associated with launch of the two MER–2003 spacecraft involves potential launch accidents that could result in the release of some of the radioactive material on board the rover. Each rover would employ two instruments which use small quantities of cobalt-57 (that would not exceed 350 millicuries) and curium-244 (that would not exceed 50 millicuries) as instrument sources. Each rover would have up to eleven RHUs that use plutonium dioxide to provide heat to the electronics and batteries on board the rover. The radioisotope inventory of up to eleven RHUs would total approximately 365 curies of plutonium.

The U.S. Department of Energy (DOE), in cooperation with NASA, has

performed a risk assessment of potential accidents for the MER–2003 project. This assessment used a methodology refined through applications to the Galileo, Mars Pathfinder, and Cassini, missions and incorporates results of safety tests on the RHUs and an evaluation of the January 17, 1997, Delta II accident at CCAFS. DOE's risk assessment for this project indicates that in the event of a launch accident the expected impacts of released radioactive material at and in the vicinity of the launch area, and on a global basis, would be small.

Dated: July 18, 2002.

Olga M. Dominguez,

Director, Environmental Management Division.

[FR Doc. 02–18734 Filed 7–23–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–091)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that AirFlow Catalyst Systems, Inc., of Rochester, New York, has applied for an exclusive license to practice the inventions described and claimed in U.S. Patent No. 6,132,694 (NASA Case Number LAR 15652–1), entitled ''Catalyst for Oxidation of Volatile Organic Compounds;'' NASA Case Number LAR 16307–1–SB, entitled ''Methodology for the Effective Stabilization of Tin-Oxide Based Oxidation/Reduction Catalysts,'' and NASA Case Number LAR 16390–1–SB, entitled ''Ruthenium Stabilization Mechanism for Next Generation Oxidation and Reduction Catalyst Systems,'' for which two United States Patent Applications were filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; and NASA Invention Disclosure Case Numbers LAR 16001–1, LAR 16308–1–CU, and LAR 16117–1–SB, entitled ''Catalyst for Treatment and Control of Post-Combustion Emissions,'' ''Catalyst for Decomposition of Nitrogen Oxides,'' and ''Sol-Gel Based Methodology for the Preparation of Oxidation/Reduction Catalysts,'' respectively. Written objections to the prospective grant of a license should be sent to Langley Research Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Helen M. Galus, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199; telephone 757–864–3227; fax 757–864–9190.

Dated: July 19, 2002.

Paul G. Pastorek,

General Counsel.

[FR Doc. 02–18733 Filed 7–23–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 9, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov.* Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Larry Baume, Acting Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1505. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an

agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. *Department of Commerce, Bureau of Industry and Security (N1–476–02–1, 9 items, 5 temporary items).* Working papers, compliance case files, appeals files, and tracking records accumulated by the Under Secretary. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of speeches, appointment books, travel files, and subject files.

2. *Department of Commerce, Bureau of Industry and Security (N1–476–02–2, 11 items, 8 temporary items).* Records of the Office of Congressional and Public Affairs, including such record series as hearing and subject files, chronological files, biographies and photographs, working papers, duplicate copies of publications, and records relating to the preparation of publications. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as press releases, audiovisual records, and speeches and statements.

3. *Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–01–4, 2 items, 1 temporary item).* Electronic copies of documents created using electronic mail and word processing that relate to measures taken to minimize the harmful effects of actions taken by agencies on designated Essential Fish Habitats. Proposed for permanent retention are recordkeeping copies of these files.

4. *Department of Defense, Defense Contract Audit Agency (N1–372–02–4, 3 items, 3 temporary items).* Records pertaining to hand receipts issued for the use of agency property. Included are original receipts issued to employees and electronic copies of documents created using electronic mail and word processing.

5. *Department of Defense, Defense Contract Audit Agency (N1–372–02–5, 2 items, 2 temporary items).* Records pertaining to reports of surveys maintained by the office being reviewed. Included are requests for corrective action and subsequent responses to surveys. Also included are documents relating to planning and completing visits to Field Audit Offices to render assistance or to conduct evaluations. This schedule modifies the disposition instructions for these files, which were previously approved for disposal.

6. *Department of Defense, Defense Contract Audit Agency (N1–372–02–9, 3 items, 3 temporary items).* Records pertaining to obtaining and using carriers for the transmission of official mail. Included are documents relating to estimating and requesting funding, cost information, and agreements as well as electronic copies of documents created using electronic mail and word processing.

7. *Department of Defense, Defense Threat Reduction Agency (N1–374–02–4, 5 items, 5 temporary items).* Records relating to the operation of the Defense Threat Reduction Agency Information Analysis Center. Included are records of contracted studies, analyses, and other projects, operations and maintenance reports, and performance and cost reports. Also included are electronic copies of documents created using electronic mail and word processing.

8. *Department of Defense, Defense Threat Reduction Agency (N1–374–02–5, 12 items, 8 temporary items).* Records relating to occupational safety and health. Included are such records as safety and health plans, safety surveys and inspections, safety awareness and protection training materials, and safety and accident reports. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of safety surveys and assessments, training materials pertaining to chemical, biological, and nuclear materiel, and accident and incident reports related to exposure to ionizing radiation or to chemical or biological agents.

9. *Department of Defense, Defense Threat Reduction Agency (N1–374–02–7, 12 items, 12 temporary items).* Records relating to the operation of the Defense Nuclear Weapons School. Included are such records as course curriculum approvals, accreditations, class lists, enrollment and completion statistics, and schedules of classes as well as a database containing information concerning courses and course participants. Also included are electronic copies of documents created using electronic mail and word processing.

10. *Department of Housing and Urban Development, Office of Public and Indian Housing (N1–207–02–5, 23 items, 23 temporary items).* Special Applications Center (SAC) application case files pertaining to requests for approval of such actions as the demolition of properties that have received agency funding, the conversion of residents from low-rent project-based assistance to tenant-based assistance, the sale of housing units to residents, and the taking of a project by eminent domain under state law. Electronic copies of records created using electronic mail and word processing are included.

11. *Department of Transportation, Research and Special Programs Administration (N1–467–01–1, 4 items, 4 temporary items).* Office of Hazardous Materials Planning and Analysis grant application files that relate to training public employees for emergency response. Records include general grant guidance, progress reporting information, applications for assistance, and administrative certification documents. The schedule applies to records created and maintained in paper and to optical disk copies of grant files. Also included are electronic copies of records created using electronic mail and word processing. Files that deal with historically significant matters will be brought to NARA's attention for appraisal on a case-by-case basis.

12. *Central Intelligence Agency, Agency-wide (N1–263–02–2, 5 items, 5 temporary items).* Copies of documents sent to or received from other government agencies for declassification review, a database used to track documents and referrals, and forms certifying declassification decisions.

13. *Environmental Protection Agency, Office of Air and Radiation (N1–412–02–9, 2 items, 2 temporary items).* Documents related to manufacturers' applications for emission certification under the Clean Air Act for motor vehicles, locomotives, and non-road mobile sources. Records contain technical product descriptions, test results, copies of certificates of conformity, notices of violations, and other related documents. Also included are electronic copies of records created using electronic mail and word processing.

14. *Federal Reserve System, Board of Governors (N1–82–02–3, 48 items, 36 temporary items).* Records created in support of the Board of Governors in such functional areas as public affairs, congressional liaison, corporate secretary activities, and legal advisory matters. Included are such records as administrative manuals, policy change

notices, telephone logs, routine correspondence, congressional subject files, and legal opinion memorandums. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are such records as minutes of Board meetings, Board policy statements, press releases, speeches and testimony, and official correspondence signed by the Board of Governors. This schedule authorizes the agency to apply the proposed disposition instructions to records in all media.

15. *Office of Navajo and Hopi Indian Relocation, Administrative Services Division (N1–220–02–11, 81 items, 50 temporary items).* Electronic data of the Client Information System, including counseling, pre-move, and post-move relocation operations data, and program analysis data. Also included are queries and program reports and daily, weekly, and six-week full and incremental backups. Proposed for permanent retention are databases documenting such matters as client and joint use areas, client eligibility, Hopi partitioned land residency and certifications, and new lands operations. The related system documentation is also proposed for permanent retention.

Dated: July 17, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–18674 Filed 7–23–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Learning Opportunities Grants Guidelines and Application Forms; Submission for OMB Review, Comment Request

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice of requests for new information collection approval.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Currently, the Institute of Museum and Library Services is soliciting comment concerning extending collection entitled, Technology Survey for Libraries and Museums. A copy of this proposed form, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Public and Legislative Affairs, Mamie Bittner at (202) 606–8339. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

DATES: Comments must be received by August 23, 2002. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

ADDRESSES: For a copy of the form contact: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, Room 510, Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 104–208 enacted on September 30, 1996 contains the former Museum Services Act and the Library Services and Technology Act, a reauthorization Public Law 104–208 authorizes the Director of the Institute of Museum and Library Services to make grants to improve museum and library service throughout the United States.

Agency: Institute of Museum and Library Services.

Title: Evaluation of IMLS General Operating Support program.

OMB Number: None.

Agency Number: 3137.

Frequency: One-time.

Affected Public: museums.

Number of Respondents: 900.

Estimated Time Per Respondent: 40 hours.

Total Burden Hours: 3600.

Total Annualized capital/startup costs: n/a.

Total Annual Costs: n/a.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to Office of Information and Regulatory Affairs; Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 02–18671 Filed 7–23–02; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 74, ''Material Control and Accounting of Special Nuclear Material (SNM);'' NUREG–1065, Rev. 2, ''Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low Enriched Uranium Facilities;'' NUREG/CR–5734, ''Recommendations to the NRC on Acceptable Standard Format and Content for the Fundamental Nuclear Material Control Plan Required for Low-Enriched Uranium Enrichment Facilities;'' and NUREG–1280, Rev. 1, ''Standard Format and Content Acceptance Criteria for the Material Control and Accounting (MC&A) Reform Amendment.''

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Submission of the FNMC is a one-time requirement which has been completed by all current licensees. However, licensees may submit amendments or revisions to the plans as necessary. In addition, specified inventory and material status reports are

required annually or semiannually. Other reports are submitted as events occur.

5. *Who will be required or asked to report:* Persons licensed under 10 CFR parts 70 who possess and use certain forms and quantities of SNM.

6. *An estimate of the number of responses:* 36 (25 responses + 11 recordkeepers).

7. *The estimated number of annual respondents:* 23.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* The number of hours needed annually to complete the requirement or request: 6,314 (1,369 hours for reporting and 4,945 hours for recordkeeping [an average of 55 hours per response and 450 hours annually for each of 11 recordkeepers]).

9. *An indication of whether section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 74 establishes requirements for material control and accounting of SNM, and specific performance-based regulations for licensees authorized to possess and use strategic special nuclear material, or to possess and use, or produce, special nuclear material of low strategic significance. The information is used by the NRC to make licensing and regulatory determinations concerning material control and accounting of special nuclear material and to satisfy obligations of the United States to the International Atomic Energy Agency (IAEA). Submission or retention of the information is mandatory for persons subject to the requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 23, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0123), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 17th day of July 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–18745 Filed 7–23–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Proposed rule, ''Geological and Seismological Characteristics for the Siting and Design of Dry Cask Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations'' which would amend 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste.''

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Specific license applications are only required to be submitted for the initial license, for the Certificate of Compliance, for amendments, and for renewal every 20 years (40 years for a monitored retrievable storage installation). General licenses for a dry cask independent spent fuel storage installation are issued under § 72.210 to persons authorized to possess a NPP license under part 50, without filing a part 72 license application. General licensees are required under § 72.212(b)(2) to retain as a record on site, a copy of the written evaluation until spent fuel is no longer stored under the general license issued under § 72.210.

5. *Who will be required or asked to report:* New specific licensees and applicants under 72.7 and 72.16 (reporting). General licensees under 72.212(b)(2) (recordkeeping).

6. *An estimate of the number of responses:* (8.5).

7. *The estimated number of annual respondents:* (8.5) (—1.5 reporting under sections 72.7 and 72.16 and —7 recordkeepers under 72.212(b)(2)).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* (466) (-7,406 hours for reporting and 6,940 hours for recordkeeping).

9. *An indication of whether section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 72 establishes requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in a dry cask independent spent fuel storage installation, and requirements for the issuance of licenses to the Department of Energy to receive, transfer, package, and possess power reactor spent fuel and high-level radioactive waste, and other associated radioactive materials, in a monitored retrievable storage installation. The proposed amendments would make the part 72 regulations compatible with the 1996 revision to 10 CFR part 100 that addressed uncertainties in seismic hazard analysis, and commensurate with the risk associated with a dry cask independent spent fuel storage installation or a monitored retrievable storage installation. The proposed amendments would also specify that general licensees evaluate dynamic loads, as well as static loads, in the design of cask storage pads and areas. These proposed amendments would make the part 72 requirements more effective and efficient and reduce the burden on licensees and on the NRC, without an adverse effect on public health and safety, or on the environment.

Submit, by August 23, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. The proposed rule indicated in ''The title of the information collection'' is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. The OMB clearance package and rule are available at the NRC WorldWide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice and are also available at the rule forum site, *http://ruleforum.llnl.gov.*

Comments and questions should be directed to the OMB reviewer by August 23, 2002, Bryon Allen, Office of Information and Regulatory Affairs (3150–0132), NEOB–10202, Office of Management and Budget, Washington DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 17th day of July 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–18746 Filed 7–23–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8084]

Rio Algom Mining LLC

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of receipt of Rio Algom Mining LLC's application for establishing alternate concentration limits in source material license SUA–1119 for the Lisbon, UT, facility and notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the Nuclear Regulatory Commission (NRC) has received, by letter dated May 22, 2002, an application from Rio Algom Mining LLC (Rio Algom) to establish Alternate Concentration Limits and amend the Source Material License No. SUA–1119 for the Lisbon uranium mill facility.

FOR FURTHER INFORMATION CONTACT: Jill S. Caverly, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6699.

SUPPLEMENTARY INFORMATION: The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR part 2, subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, ATTN: Rulemaking and Adjudications Staff, Washington, DC 20555:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Rio Algom Mining LLC, 6305 Waterford Blvd., Suite 400, Oklahoma City, Oklahoma 73118, Attention: William Paul Goranson; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register.** The comments may be provided to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 10th day of July 2002.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–18747 Filed 7–23–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Rochester Gas and Electric Corporation (the licensee) to withdraw its March 18, 2002, application for proposed amendment to Facility Operating License No. DRP–18 for the R.E. Ginna Nuclear Power Plant, located in Wayne County, New York.

The proposed amendment would have revised the Technical Specifications to remove the administrative requirement that a candidate for the plant operations manager position hold a Senior Reactor Operator License at the time of appointment.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 30, 2002 (67 FR 21292). However, by letter dated June 12, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 18, 2002, and the licensee's letter dated June 12, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of July 2002.

For the Nuclear Regulatory Commission.

Robert Clark,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18748 Filed 7–23–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guides; Extension of comment period

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of Comment Period.

SUMMARY: On December 14, 2001 (66 FR 64893), the U.S. Nuclear Regulatory Commission (NRC) published for public comment draft regulatory guide DG–1111, ''Atmospheric Relative Concentrations for Control Room Radiological Habitability Assessments at Nuclear Power Plants.'' The public comment period was to have expired on March 15, 2002. On January 25, 2002 (67 FR 3743), NRC published for public comment draft regulatory guide DG–1113, ''Methods and Assumptions for Evaluating Radiological Consequences of Design Basis Accidents at Light-Water Nuclear Power Reactors.'' The public comment period was to have expired on April 30, 2002. On March 28, 2002 (67 FR 14992), NRC published for public comment draft regulatory guides DG–1114, ''Control Room Habitability at Light-Water Nuclear Power Reactors,'' and DG–115, ''Demonstrating Control Room Envelope Integrity at Nuclear Power Reactors.'' The public comment period was to have expired on June 28, 2002. Although issued for public comment individually, these draft guides are all related to control room habitability. The NRC received a request to extend the comment period for all four draft guides to allow reviewers an opportunity to review and comment on interrelationships between the guides. After considering of the request, NRC has decided to extend the public comment period for these guides until September 6, 2002.

DATES: The public comment periods for DG–1111, DG–1113, DG–1114, and DG–1115 have been extended and now expire on September 6, 2002. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T–6D59, Washington, DC 20555–0001. Deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., on Federal workdays. Copies of any comments received and documents related to this action may be examined at the NRC Public Document Room, One White Flint North, Public File Area O1–F21, 11545 Rockville Pike, Rockville, Maryland. Documents are also available electronically at NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html.* From this site, the public can gain entry into NRC's Agencywide Documents Access and Management System(ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the proposed draft regulatory guides are ML013130132 for DG–1111, ML020160023 for DG–1113, ML020790125 for DG–1114, and ML020790191 for DG–1115. For more information, contact the NRC's Public Document Room reference staff by telephone at (800) 397–4209 or (301) 415–4737 by or e-mail to *pdr@nrc.gov.* The draft regulatory guides are also available on NRC's Web site at *http://www.nrc.gov/reading-rm/adams.html.* You may also send comments electronically from this Web site by clicking on the comment form. A copies of the proposed regulatory guides are also available for inspection, and copying for a fee, in the NRC's Public Document Room, One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: W. Mark Blumberg, (telephone (301) 415–1083, e-mail *wmb1@nrc.gov* or Stephen LaVie on (telephone (301) 415–1081, e-mail: *sfl@nrc.gov.*

Dated at Rockville, Maryland, this 11th day of July 2002.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Chief, Probabilistic Safety Analysis Branch, Division of Systems and Safety Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18744 Filed 7–23–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ad–17, SEC File No. 270–412, OMB Control No. 3235–0469

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17Ad–17 Transfer Agents' Obligation to Search for Lost Securityholders

Rule 17Ad–17 [17 CFR 240.17Ad–17] requires approximately 952 registered transfer agents to conduct searches using third party database vendors to attempt to locate lost securityholders. The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–17 is five hours annually. The total burden is approximately 4,760 annually for all transfer agents. The cost of compliance for each individual transfer agent depends on the number of lost accounts for which it is responsible. Based on information received from transfer agents, we estimate that the annual cost industry wide is $3.3 million.

The retention period for the recordkeeping requirement under Rule 17Ad–17 is three years. The recordkeeping requirement under Rule 17Ad–17 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget,

Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 17, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18645 Filed 7–23–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–32; File No. S7–27–02]

Privacy Act of 1974; Amended System of Records for Enforcement Files

AGENCY: Securities and Exchange Commission.

ACTION: Notice of amended system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission gives notice of the amendment of its system of records for Enforcement Files (SEC–42) to clarify its routine uses with respect to disclosures related to the collection of amounts ordered to be paid in civil and administrative proceedings, to incorporate a statement regarding disclosure to consumer credit reporting agencies, to update statutory and regulatory references in certain routine uses, to update addresses of system administrators, and to identify exemptions from disclosure that have been claimed for this system of records under the Privacy Act.

DATES: Comments must be received by August 23, 2002. The amendments will take effect September 2, 2002 unless the Commission receives comments that would require a different determination.

ADDRESSES: Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. You may also send your comments electronically to the following electronic address: *rule-comments@sec.gov.* All comments should refer to File No. S–27–02 and, if sent electronically, should include this file number on the subject line. Comment letters will be available for public inspection and copying at our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. If sent electronically, comment letters will also be available on our Web site *http://www.sec.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth H. Hall, Assistant Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0809, (202) 942–4635.

SUPPLEMENTARY INFORMATION: The Commission has amended its system of records for the files maintained by the Division of Enforcement. The information in the system is obtained and used for purposes of the Commission's investigations and actions to enforce the federal securities laws. The information in the system is used in conjunction with the collection of amounts ordered to be paid in enforcement actions, a function that is a necessary component of litigation. However, the Debt Collection Act, as amended by the Debt Collection Improvement Act of 1996, requires agencies to publish a notice identifying each system of records from which information may be disclosed to consumer credit reporting agencies (*i.e.,* consumer credit bureaus). The Office of Management and Budget has indicated that this notice should take the form of an insert to existing systems of records. *See* OMB, *Privacy Act of 1974; Guidelines on the Relationship of the Debt Collection Act of 1982 to the Privacy Act of 1974,* 48 FR 15556, 15558 (April 11, 1983). The Commission has thus incorporated a statement regarding consumer credit reporting into the system of records for Enforcement Files.

The Commission has also revised the routine uses for Enforcement Files to clarify that disclosure may be made in connection with certain debt collection procedures that are mandatory for federal agencies. A routine use has thus been adopted which specifically states that disclosure may be made when the Commission seeks to collect by offset, *i.e.,* the withholding of amounts otherwise payable by the government to a debtor. *Administrative offset*, authorized by the Debt Collection Act, 31 U.S.C. 3716, is the most general form of such withholding, and applies to most amounts that may be payable to a debtor. *Tax refund offset*, authorized by 31 U.S.C. 3720A, authorizes the withholding of federal income tax refunds to satisfy a debt owed to the government. *Salary offset*, authorized by 5 U.S.C. 5514, authorizes the withholding of a portion of the wages due to a federal employee. The routine use also indicates that disclosure may be made in connection with *administrative wage garnishment,* a procedure by which the Commission may direct a non-federal employer to withhold a portion of an employee's wages to satisfy a debt owed to the government. In addition, notice is given that disclosure may be made to other persons, including other federal agencies and private collection agents, who assist in the collection of amounts owed as a result of enforcement actions.

The Commission has adopted technical amendments to other routine uses. Four of the existing routine uses (those numbered 11, 12, 15 and 17) refer to the definition of ''federal securities laws'' which has been moved from Section 21(g) of the Exchange Act to Section 3(a)(47); this reference has been updated. Two of the routine uses (those numbered 7 and 12) contain incorrect references to the re-codified Rules of Practice, and those references have been updated.

The Commission has updated the addresses of the following system administrators: the Commission's Records Officer; the Regional Directors for the Northeast Regional Office, the Southeast Regional Office, the Central Regional Office, the Pacific Regional Office and the Midwest Regional Office; and the District Administrators for the Philadelphia District Office, the Fort Worth District Office, and the Salt Lake District Office.

The Commission has also added a statement identifying the exemptions that have been claimed for this system of records. The Privacy Act includes provisions that generally require an agency to: notify an individual, upon request, of the existence of information contained in a record pertaining to the individual; permit access to such record and permit amendment or correction of such record; make available to an individual an accounting of disclosures to third-parties; publish the sources of information in the system; and screen records to ensure that only such information is maintained about the individual as is necessary and relevant to a required purpose of the Commission. *See* 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f). The Privacy Act permits an agency, by rule, to claim exemption from these provisions for any system containing ''investigatory material compiled for law enforcement purposes'' if disclosure would interfere with the conduct of investigations. 5 U.S.C. 552a(k)(2). The Commission has claimed exemptions from these provisions for its Enforcement Files system of records. 17 CFR 200.312(a)(1).

Accordingly, SEC–42 is amended to read as follows:

SEC–42

SYSTEM NAME:

Enforcement Files.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

7. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

* * * * *

11. In connection with their regulatory and enforcement responsibilities mandated by the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), or state or foreign laws regulating securities or other related matters, records may be disclosed to national securities associations that are registered with the Commission, the Municipal Securities Rulemaking Board, the Securities Investor Protection Corporation, the federal banking authorities, including but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, state securities regulatory or law enforcement agencies or organizations, or regulatory law enforcement agencies of a foreign government, or foreign securities authority.

12. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or the Commission's Rules of Practice, 17 CFR 201.100–900, or otherwise, where such trustee, receiver, master, special counsel or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice.

* * * * *

15. Inclusion in reports published by the Commission pursuant to authority granted in the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)).

* * * * *

17. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735–1 to 735–18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as defined in Section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

* * * * *

23. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

DISCLOSURE TO CONSUMER REPORTING AGENCIES

When the Commission seeks to collect a debt arising from a civil action or administrative proceeding, it may disclose the following information to a consumer reporting agency: (i) Information necessary to establish the identity of the debtor, including name, address and taxpayer identification number or social security number; (ii) the amount, status, and history of the debt; and (iii) the fact that the debt arose from a Commission action or proceeding to enforce the federal securities laws.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

SYSTEMS MANAGERS AND ADDRESSES:

Director, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0801; Records Officer, Securities and Exchange Commission, 6441-D General Green Way, Alexandria, VA 22312; Regional Director, Northeast Regional Office, 233 Broadway, New York, NY 10279; District Administrator, Boston District Office, 73 Tremont Street, Suite 600, Boston, MA 02108–3912; District Administrator, Philadelphia District Office, The Curtis Center, 601 Walnut Street, Suite 1120 E., Philadelphia, PA 19106–3322; Regional Director, Southeast Regional Office, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131; District Administrator, Atlanta District Office, 3475 Lenox Road, N.E., Suite 1000, Atlanta, GA, 30326–1232; Regional Director, Midwest Regional Office, 175 West Jackson Boulevard, Suite 900, Chicago, IL 60604; Regional Director, Central Regional Office, 1801 California Street, Suite 1500, Denver, CO 80202–2648; District Administrator, Fort Worth District Office, 801 Cherry Street, Unit #18, Fort Worth, TX 76102–6882; District Administrator, Salt Lake District Office, 50 South Main Street, Suite 500, Salt Lake City, UT 84144–0402; Regional Director, Pacific Regional Office, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, CA 90036–3648; and District Administrator, San Francisco District Office, 44 Montgomery Street, Suite 1100, San Francisco, CA 94104.

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under 5 U.S.C. 552a(k)(2), this system of records is exempted from the following provisions of the Privacy Act, 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). These exemptions are contained in 17 CFR 200.312(a)(1).

By the Commission.

Dated: July 18, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18646 Filed 7–23–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46219; File No. SR–CHX–2002–14]

Self Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Delete Rule Provisions Relating to the Trading of Options

July 17, 2002.

On April 26, 2002, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to delete provisions governing or relating to the trading of options on the CHX. Under the proposed rule change, CHX would delete certain provisions of its rules that govern or make reference

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

to the trading of options on the CHX. In 1980, the Commission approved changes to the Exchange's bylaws and rules that deleted most references to the Exchange's operation of an options market.[3] Since that time, CHX has not operated an options market, but has served as an self-regulatory organization participant on the Options Self-Regulatory Council (''OSRC'') for essentially informational purposes.

In its proposal, CHX explained that given changes in the options market and obligations of OSRC participants, it believes that it is no longer advisable, from either a regulatory or economic perspective, to continue serving on the OSRC.[4] Accordingly, the proposed rule change deletes from the CHX rules all remaining references to the trading of options and handling of options orders, which in turn, excuses the Exchange from any obligation to serve on the OSRC.

The proposed rule change was published for comment in the **Federal Register** on June 13, 2002.[5] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6 of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the rule change appropriately conforms the CHX rules to the current scope of the CHX's operations, which does not currently include operating an options market.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–CHX–2002–14) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18700 Filed 7–23–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 17075 (August 19, 1980), 45 FR 56486 (August 25, 1980).

[4] If the CHX were to continue to serve, it would be responsible for a *pro rata* share of OSRC member examination costs, which CHX states are significant. CHX believes that there is no rationale that supports CHX payment of examination costs attributable to exchanges that are actively trading options, given that CHX does not presently trade options and would have to propose significant rule changes should it elect to commence options trading in the future.

[5] *See* Securities Exchange Act Release No. 46044 (June 6, 2002), 67 FR 40761 (June 13, 2002).

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46227; File No. SR–NYSE–2001–18]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change Relating to NYSE Rule 72 Regarding Clean Crosses of Orders of 100,000 Shares or More, and Providing That a Specialist May Not Effect a Proprietary Transaction to Provide Price Improvement to One Side of a Clean Cross or the Other

July 18, 2002.

I. Introduction

On July 3, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 72(b) to (i) permit clean crosses of 100,000 shares or more when a member organization is facilitating a customer order; and (ii) provide that a specialist may not effect a proprietary transaction to break up a cross being effected under the Rule. The proposal was published for notice and comment in the **Federal Register** on November 6, 2001.[3] The Commission received three comments on the proposal.[4] On January 29, 2002, the NYSE responded to the comments.[5]

On June 18, 2002, the NYSE amended the proposal by removing the proposed amendment to Rule 72(b) relating to clean crosses of 100,000 shares or more.[6] This order approves the proposed rule change. Also, Amendment No. 1 is approved on an accelerated basis.

II. Description of the Proposed Rule Change

As a result of Amendment No. 1, the proposed rule change consists only of the NYSE's amendment of NYSE Rule 72(b) to provide that a specialist may not effect a proprietary transaction to provide price improvement to one side of a clean cross or the other. The Exchange understands that there may be a perception that specialists can break up a proposed cross transaction by trading for their own account at a minimally improved price, and, thereby, step ahead of a public customer on the other side of the cross. The NYSE believes the proposed rule change, as amended, will preserve the auction market principle of price improvement, since non-proprietary interest of specialists and particular Floor brokers in the market may offer price improvement at any minimum variation.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, the

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45004 (October 31, 2001), 66 FR 56143.

[4] *See* November 27, 2001 letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC (''ICI Letter''); December 18, 2001 letter from Thomas N. McManus, Executive Director and Counsel, Morgan Stanley (''Morgan Stanley Letter''); February 11, 2002 letter from Alton B. Harris, Ungaretti & Harris (''Ungaretti Letter''). All of the comment letters focused on the provision allowing clean crosses of 100,000 shares or more when a member organization is facilitating a customer order. This provision was subsequently deleted from the proposed rule change. See footnote 6, *infra*. The Commission reviewed the comment letters. Because the letters pertained to those portions of the original proposed rule change that were subsequently removed by Amendment No. 1, the Commission has not included a summary of comments in this order.

[5] *See* January 29, 2002 letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC (''NYSE Response Letter'').

[6] *See* June 14, 2002 letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC and attachments (''Amendment No. 1'').

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

requirements of Section 6 of the Act [8] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act [9] in that the Rule is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change, while eliminating the opportunity for specialists to effect a proprietary transaction to provide price improvement to one side of a clean cross or the other, preserves the auction market principle of price improvement by continuing to allow non-proprietary interest of specialists and particular Floor brokers in the market to offer price improvement at any minimum variation.

The Commission finds good cause for approving Amendment No. 1 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 simply removes the provision from the original filing that would have allowed clean crosses of 100,000 shares or more when a member organization is facilitating a customer order. This provision was the focus of the comment letters. Because Amendment No. 1 removes this provision, the Commission believes it is appropriate to approve Amendment No. 1 on an accelerated basis. For these reasons, the Commission finds good cause for accelerating approval of Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2001–18 and should be submitted by August 14, 2002.

V. Conclusion and Order

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–2001–18), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18697 Filed 7–23–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4069]

Office of Global Educational Programs (ECA/A/S); 30-Day Notice of Proposed Information Collection: Fulbright Teacher and Administrator Exchange Program Application Package; Forms DS–4500, 4501, 4502, 4503, 4504, 4505, 4506; OMB Number 1405–0114

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement with change of a previously approved collection for which approval has expired.

Originating Office: Office of Global Educational Programs (ECA/A/S).

Title of Information Collection: Fulbright Teacher and Administrator Exchange Program Application Package.

Frequency: Annual.

Form Number: DS–4500, 4501, 4502, 4503, 4504, 4505, and 4506.

Respondents: Educators desiring to participate in the Fulbright Teacher and Administrator Exchange Program.

Estimated Number of Respondents: 862.

Average Hours Per Response: 2.

Total Estimated Burden: 1724.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from U.S. Department of State, SA–44, Room 349; 301 Fourth St., SW; Washington, DC 20547. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: July 9, 2002.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–18723 Filed 7–23–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4070]

M/DGHR/MED/EX; 30-Day Notice of Proposed Information Collection: Form DS–1843, Medical History and Examination for Foreign Service—Persons 12 Years and Over; Form DS–1622, Medical History and Examination for Foreign Service—For Children 11 Years and Under; OMB Number 1405–0068

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a current collection.

Originating Office: Office of Medical Services, M/DGHR/MED.

Title of Information Collection: Medical History and Examination for Foreign Service Persons 12 Years and Over; Medical History and Examination for Foreign Service—For Children 11 Years and Under.

Frequency: Biennially.

Form Numbers: DS–1843 and DS–1622.

Respondents: Candidates for Foreign Service Positions and their Eligible Family Members.

Estimated Number of Respondents: 12,000.

Average Hours Per Response: One Hour.

Total Estimated Burden: 12,000.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from John A. Triplett, M.D., Office of Medical Services, 2401 E Street, NW., U.S. Department of State, Washington, DC 20522, telephone 202–663–1680. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: July 7, 2002.

Maria C. Melchiorre,

Acting Executive Director, Office of Medical Services, Department of State.

[FR Doc. 02–18724 Filed 7–23–02; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Four Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on four currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. *2120–0007, Flight Engineers and Flight Navigators—FAR 63.* The information collected will be used to determine compliance of applicants with the provisions of FAR Part 63, which prescribes the requirements of eligibility for flight navigator and flight engineer certification and training course requirements for those airmen. The current estimated annual reporting burden is 1,009 hours.

2. *2120–0576, Kansas City Center Customer Satisfaction Questionnaire.* The information collected on this form represents customer feedback concerning the quality of service provided to the users of Kansas City ARTCC airspace. This information may be used to solve problems, improve safety, and increase system efficiency. Respondents are general aviation pilots, air taxi operators, airlines, military pilots, and adjacent families. The current estimated annual reporting burden is 25 hours.

3. *2120–0605, ACSEP Evaluation Customer Feedback Report.* The information is collected from holders of FAA production approvals and selected suppliers to obtain their input on how well the agency is performing the administration and conduct of the Aircraft Certification Systems Evaluation Program (ACSEP). The agency uses the information as a customer service standard and to continually improve ACSEP. The current estimated annual reporting burden is 225 hours.

4. *2120–0651, Additional Flight Data Recorder Requirements for Certain Boeing 737 Airplanes.* This collection of information requires the recording of additional operating parameters for certain Boeing 737 airplanes. These additional parameters allow the NTSB and FAA to establish a cause and enable the industry to make appropriate modifications to prevent future incidents. The current estimated annual reporting burden is 1 hour.

Issued in Washington, DC, on July 10, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 02–18618 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Peoria, Marshall, Putnam, and Bureau Counties, IL

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for expanding Illinois 29 to a four-lane highway. The proposed project will extend from Illinois 6 in Peoria County north to I–180 in Bureau County.

FOR FURTHER INFORMATION CONTACT:

Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600

Joseph E. Crowe, P.E., District Engineer, Illinois Department of Transportation, District 4, 401 Main Street, Peoria, Illinois 61602–1111, Telephone: (309) 671–3333

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve existing Illinois 29 to a four-lane highway from Illinois 6 in Peoria County north to I–180 in Bureau County. The approximately 35-mile long project corridor is located west of and parallel to the Illinois River. The proposal is being considered to improve north-south highway access west of the Illinois River, enhance travel efficiency, and support economic development in the region. Alternatives under consideration include: (1) The No-Build Alternative, (2) improvements to the existing highway, and (3) possible bypasses at Chillicothe, Sparland, Henry and Putnam.

Alignment studies will determine one preferred alignment location and address the type of facility and preliminary interchange geometrics. Engineering and environmental conditions will be addressed in order to determine an alignment that meets the transportation needs of the region while minimizing the impacts to the environment. Potentially affected resources include agricultural land, archaeological sites, wetlands, woodlands, natural areas, State Conservation Areas, a nature preserve, historic structures, and residential and commercial property. Preliminary measures to minimize harm, probable construction cost estimates and estimated right of way requirements will be developed as part of the study.

The scoping process undertaken for this project will include distribution of a scoping informational packet, coordination with appropriate Federal, State, and local agencies, and review sessions as needed. An informational scoping packet may be obtained from one of the contact people listed above.

To ensure that the full range of issues related to this proposed action are addressed, and all substantive issues are identified, public involvement activities will be conducted as part of the study. Public information meetings, local government meetings, and newsletters will provide opportunities for public involvement. A public hearing will be held at the time that the Draft EIS is made available for comment. The project's Draft EIS will be available for public and agency review prior to the public hearing. The time and location of the public information meeting and public hearing will be announced in local newspapers. Comments or questions concerning this proposed action and the Draft EIS should be directed to FHWA or the Illinois Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 18, 2002.

J.D. Stevenson,

Environmental Programs Engineer, Springfield, Illinois.

[FR Doc. 02–18666 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Peoria, Tazewell, Woodford, Livingston, Marshall, Mclean, Putnam, Bureau and, La Salle

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will not be prepared for the study of a proposed four-lane Heart of Illinois Highway in north central Illinois. Three feasible corridors identified by Illinois DOT as part of an earlier study were to be the focus of the EIS.

FOR FURTHER INFORMATION CONTACT:

Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600

Joseph E. Crowe, P.E., District Engineer, Illinois Department of Transportation, District 4, 401 Main Street, Peoria, Illinois 61602–1111, Telephone: (309) 671–3333

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, issued a notice of intent to prepare an Environmental Impact Statement (EIS) on a proposal to develop a four-lane divided highway, known as the Heart of Illinois Highway, between Peoria and the interstate freeway system either north or east of Peoria. Three feasible corridors previously identified by Illinois DOT were to be examined as part of the EIS. The notice of intent to prepare an EIS for this project was published in the **Federal Register** on April 26, 2000 (Volume 65, Number 81).

Due to public opposition and lack of regional support, this project has been put on hold indefinitely. At this time there are no plans to prepare an EIS for this project.

Comments or questions concerning this notice should be directed to FHWA or the Illinois Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on July 18, 0002.

J.D. Stevenson,

Environmental Programs Engineer, Springfield, Illinois.

[FR Doc. 02–18667 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12891]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FREE SPIRIT.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 23, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12891.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: FREE SPIRIT. Owner: Crown Enterprises, LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Gross: 33, Net: 26, Length: 47.9 ft., Breadth: 15.6 ft, Depth: 6.7 ft.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''The intended commercial use of this vessel is for harbor and offshore cruising from Santa Barbara to San Diego, California, including the offshore islands of Catalina, San Clemente, Santa Barbara, Anacapa, Santa Cruz, Santa Rosa and San Miguel. All such usage would involve 12 passengers or less.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1991. Place of construction: Taiwan, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''The primary yacht chartering businesses in the Southern California area deal with much larger boats, specializing either in bay and dinner cruising with large groups, the transport of passengers to the City of Avalon, on Catalina Island, or involve similar sized or smaller boats which specialize in fishing trips. There are very few smaller boats (under 60 feet) available for charter for cruising. Accordingly, the offering of this vessel for harbor cruises, and for offshore cruising, with 12 or fewer people, will have a minimal, if any, impact on existing operators.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''This waiver will have no material negative effect on U.S. shipyards. If anything, increased usage of the boat will result in a positive contribution to local shipyards, as additional maintenance will be required by such commercial usage.''

Dated: July 19, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18718 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12877]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MAGIC DAULPHIN.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 23, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12877. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: MAGIC DAULPHIN. Owner: Captain Stephen L. Flowers.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''24 GRT, 21 NRT, Length: 51.0 ft., Breadth: 14.7 ft., Depth: 6.5 ft.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''This vessel will be used for charters on the Florida coast along the Gulf of Mexico and Atlantic Ocean based in Fort Myers Beach.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: UNKNOWN. Place of construction: UNKNOWN.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''There are currently six to eight sailboat charters operating in this region based in Fort Myers Beach. Because of the ever increasing number of tourist flocking to this area each year, minimal or no impact is expected for these existing sailboat charters.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''The vessel for which the waiver is requested will be docked at a local marina and all repairs and maintenance will be performed locally as well as supplies purchased locally creating a positive effect on local shipyards and vendors. In addition, crew will be hired as needed from the local area.''

Dated: July 18, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18661 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12875]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SHEARWATER.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 23, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12875. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: SHEARWATER. Owner: Caribe Yankee LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''11 tons; 8 passengers; 48′ × 26′ × 5½-draft.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Personal/charter in Eastern Seaboard of USA—Marine to FLorida.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1992. Place of construction: Jeantot Marine, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''Should not be much. We are a small charterer in off-market areas; less than 20 charters per year.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''We use U.S. yards for annual and regular service and maintenance needs.''

Dated: July 18, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18662 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12890]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TORTUGA.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S.

vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 23, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12890. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: TORTUGA. *Owner:* James A. Williams and Stephanie L. Rice.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Length—48.6′, Breadth—15.5′, Depth—6.5′, Capacity—To carry 12 or fewer passengers, Tonnage—Gross 32 tons.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''The intended use of the vessel is to carry 12 or fewer passengers for week-end boat and breakfast charter trips.'' ''The vessel will be used in the Chesapeake Bay from Annapolis, Maryland down the East Coast, around the Florida Keys and the West Coast of Florida in the Gulf of Mexico.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1971. *Place of construction:* Hong Kong, China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''To the best of my knowledge there will be no adverse effect on other commercial passenger vessel operators in the area. I am not aware of any commercial passengers operators doing the types of trips I plan to make.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''To the best of my knowledge the possible impact that my operation will have on U.S. Shipyards is the repair business for my vessel as a result of the approval of this waiver.''

Dated: July 19, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18719 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Ninth Quarterly Meeting of the Crash Injury Research and Engineering Network (CIREN)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting Announcement.

SUMMARY: This notice announces the Ninth Quarterly Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at ten Level 1 Trauma Centers linked by a computer network. Researchers can review data and share expertise, which could lead to a better understanding of crash injury mechanisms and the design of safer vehicles.

DATE AND TIME: The meeting is scheduled from 9:00 a.m. to 5:00 p.m. on Thursday, August 22, 2002.

ADDRESSES: The meeting will be held at the Harborview Medical Center's Research and Training Building Auditorium at 9th and Alder St., Seattle, WA. (Hosted by the Seattle CIREN center)

To Register for This Event: Please visit the Seattle CIREN team's Web site at *www.hiprc.org* and locate the CIREN conference announcement.

SUPPLEMENTARY INFORMATION: The CIREN System has been established and crash cases have been entered into the database by each Center. CIREN cases may be viewed from the NHTSA/CIREN Web site at: *http://www-nrd.nhtsa.dot.gov/departments/nrd-50/ciren/CIREN.html.* NHTSA has held three Annual Conferences where CIREN research results were presented. Further information about the three previous CIREN conferences is also available through the NHTSA Web site. NHTSA held the first quarterly meeting on May 5, 2000, with a topic of lower extremity injuries in motor vehicle crashes; the second quarterly meeting on July 21, 2000, with a topic of side impact crashes; the third quarterly meeting on November 30, 2000, with a topic of thoracic injuries in crashes; the fourth quarterly meeting on March 16, 2001, with a topic of offset frontal collisions; the fifth quarterly meeting on June 21, 2001, on CIREN outreach efforts; the sixth quarterly meeting (held in Ann Arbor, Michigan) with a topic of injuries involving sport utility vehicles, the seventh quarterly meeting on December 6, 2001, with a topic of Age Related Injuries (Elderly and Children), and the eighth quarterly meeting on April 25, 2002, with a topic of Head and Traumatic Brain Injuries. Presentations from these meetings are available through the NHTSA Web site.

NHTSA plans to continue holding quarterly meetings on a regular basis to disseminate CIREN information to interested parties. This is the ninth such meeting. The ten CIREN Centers will be presenting papers on the research specialty for their particular center regarding crash injury mechanisms. Subsequent meetings have tentatively been scheduled for December 2002 and April 2003. These meetings are in lieu of an annual CIREN conference.

Should it be necessary to cancel the meeting due to inclement weather or to

any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's Web site *http://www.nhtsa.dot.gov/nhtsa/announce/meetings/*. If you do not have access to the Web site, you may call the contact listed below and leave your telephone or fax number. You will be called only if the meeting is postponed or canceled.

For Further Information Contact NHTSA or SEATTLE CIREN CENTER at:

NHTSA—Catherine McCullough, Office of Human-Centered Research, 400 Seventh Street, SW., Room 6220, Washington, DC 20590, telephone: (202) 366–4734.

CIREN SEATTLE—Rob Kaufman, Harborview Injury Prevention and Research Center, 325 Ninth Ave., Box 359960, Seattle, WA 98104. Telephone: (206) 521–1533.

Issued on: July 17, 2002.

Raymond P. Owings,

Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 02–18615 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

[STB Finance Docket No. 34204]

South Kansas and Oklahoma Railroad Company—Lease Exemption—The Burlington Northern and Santa Fe Railway Company

South Kansas and Oklahoma Railroad Company (SKO), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from The Burlington Northern and Santa Fe Railway Company (BNSF) 6.22 miles of rail line located between milepost 139.10 near Pittsburg, KS, and milepost 145.32, near Cherokee, KS. SKO will be the operator of the property.

Because SKO's projected annual revenues will exceed $5 million, SKO certified to the Board on May 3, 2002, that it sent the required notice of the transaction to the national offices of all labor unions representing employees on the line and posted a copy of the notice at the workplace of the employees on the affected lines on April 25, 2002. *See* 49 CFR 1150.42(e).

The transaction was scheduled to be consummated on or shortly after July 2, 2002 (60 days after SKO's certification to the Board that it had complied with the Board's rule at 49 CFR 1150.42(e)).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34204, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of the each pleading must be served on Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our website at ''*www.stb.dot.gov.*''

Decided: July 16, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18438 Filed 7–23–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34218 (Sub–No. 1)]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption-Union Pacific Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34218[1] to permit the trackage rights agreement to expire on August 16, 2002.

DATES: This exemption is effective on August 15, 2002. Petitions to reopen must be filed by August 5, 2002.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34218 (Sub-No. 1) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on Michael E. Roper, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal Copy Service, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339].

Board decisions and notices are available on our website at ''*http://WWW.STB.DOT.GOV.*''

Decided: July 17, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18551 Filed 7–23–02; 8:45 am]

BILLING CODE 4915–00–P

[1] On June 10, 2002, The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement by Union Pacific Railroad Company (UP) to grant temporary overhead trackage rights to BNSF between UP milepost 428.7 at Klamath Falls, OR, and UP milepost 141.9 at Binney Junction (Marysville), CA, a total distance of approximately 286.8 miles. *See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 34218 (STB served June 28, 2002). The trackage rights operations under the exemption became effective and were scheduled to be consummated on June 17, 2002.

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Criteria for Certification of Explosives Trace Detection Systems

AGENCY: Transportation Security Administration (TSA) DOT.

ACTION: Notice.

SUMMARY: This notice discusses the criteria that an Explosive Trace Detection system (ETD) must satisfy in order to be certified by TSA (hereinafter referred to as the criteria). The criteria establish minimum acceptable performance in detecting and identifying trace amounts of explosives at levels indicative of contamination from the presence of explosive material or from proximity or contact with suspect individuals who handled explosive material. The criteria also establish certain minimum acceptable operational requirements.

FOR FURTHER INFORMATION CONTACT: Richard Burdette, Office of Information and Security Technology, Transportation Security Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–7398.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can get an electronic copy of this notice using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last digits of the docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the docket summary information for the docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140html.*

In addition, copies are available by writing or calling the Transportation Security Administration's Air Carrier Division, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202–267–3413.

Release of National Security and Sensitive Information

The complete criteria are contained in the Certification Plan for Explosives Trace Detection Equipment (Certification Plan). Certain portions of the criteria are of national security concern and require safeguarding from unauthorized disclosure pursuant to Executive Order 12356 (National Security Information, often referred to as classified information). Further, pursuant to TSA regulations governing protection of sensitive security information, *See* 67 FR 8340, 8352 (Feb. 20, 2002) (to be codified at 49 CFR part 1520), certain unclassified information incorporated in the criteria has been determined to be sensitive security information. Upon request, the Certification Plan will be provided to prospective vendors of ETDs and other interested persons with a bona fide need to know, provided such persons have appropriate authorization for access to U.S. Government national security information and sensitive security information. The Certification Plan, without the national security information, will be provided to other interested persons with a bona fide need to know, provided such persons have appropriate authorization for access to sensitive security information.

Availability of Certification Plan

Persons requesting access to, or a copy of, the Certification Plan (including all classified and sensitive security information) may write to: Information Security Program Manager, Office of Inspection (TSA–13), Transportation Security Administration, 400 7th Street, SW., Washington, DC 20590.

Individuals requesting the classified portion of the Certification Plan must include information regarding authorizations and security clearances for access to U.S. Government national security information, and sufficient explanatory information supporting the request to demonstrate a bona fide need to know the information contained in the Certification Plan.

Background

In light of the September 11, 2001, terrorist attacks in the United States and the potential for future attacks in this country, Congress enacted the Aviation and Transportation Security Act (ATSA), Public Law 107–71, 115 Stat. 597 (November 19, 2001), which established the Transportation Security Administration (TSA) as an operating administration within the Department of Transportation (DOT), headed by the Under Secretary of Transportation for Security (Under Secretary).

Pursuant to ATSA, TSA is responsible for security in all modes of transportation, including civil aviation under Chapter 449 of title 49, United States Code, related research and development activities, and other transportation security functions exercised by DOT. TSA is specifically responsible for the day-to-day security screening operations for passenger air transportation and intrastate air transportation under 49 U.S.C. 44901 and 44935. This includes, among other things, the screening of checked baggage carried aboard passenger aircraft.

Under 49 U.S.C. 44901(d)(1), TSA is required to ensure that explosive detection systems are deployed so that United States airports have sufficient explosive detection systems to screen all checked baggage at those airports by December 31, 2002. TSA will meet this requirement through the deployment of bulk explosive detection systems (EDS) and ETDs.

In 1993, the Federal Aviation Administration issued criteria for the certification of bulk EDS that established minimum performance requirements for screening of checked baggage. *See* 58 FR 47804 (Sept. 10, 1993). TSA, as the agency now responsible for civil aviation security, is issuing criteria for the certification of ETDs used to screen baggage, including both checked baggage or accessible property, and the contents of baggage.

The ETD Criteria

The following sets forth a summary of the criteria. It does not include those portions that contain either National Security Information that requires safeguarding pursuant to Executive Order 12356, or sensitive security information that requires safeguarding pursuant to TSA regulations, *see* 67 FR 8340, 8352 (Feb. 20, 2002) (to be codified at 49 CFR part 1520.7) (together referred to as ''sensitive criteria''). The Certification Plan contains all the criteria, as well as the steps the vendor must take to have TSA certify its ETD.

Testing of ETDs presented to TSA for ETD certification will be performed in accordance with the TSA's Certification Plan for Explosive Trace Detection Equipment (the Certification Plan). The Certification Plan is consistent with the recommendations for certification of trace equipment in the 1999 National Research Council's report on the ''Assessment of Technologies Deployed to Improve Aviation Security.''

All costs, direct and indirect, associated with testing and certification (*e.g.,* insurance, shipping, installation, set-up, technical operation, maintenance, calibration, disassembly, and TSA laboratory testing costs) must be borne by the vendor.

Summary of the Criteria for Certification of Explosive Trace Detection Systems

Terms Used

For purposes of the criteria:

An ''explosive trace'' is a minute residue of explosive materials that may be the remnant of threat activities, including bomb making or coming into close proximity with a suspect individual (*e.g.,* bomb makers or bomb distributors).

An ETD is a device, or combination of devices, that has the ability to detect and identify potential threats by looking for explosive traces in or on baggage and its contents, to include electronic items, electric items, courier pouches, and other concealments, as specified by TSA.

The term ''baggage'' includes accessible property and checked baggage.

The term ''accessible property'' includes to all items presented at the screening checkpoint prior to entering the sterile area including electronic and electric items intended to be carried into the sterile area or in the passenger cabin of the aircraft.

The term ''checked baggage'' includes all passenger bags destined for the aircraft cargo hold, including originating and transfer baggage.

The term ''nuisance alarm'' means an alarm by the ETD that may be caused by the presence of explosive traces when no bomb is present or by other materials that produce a signature indistinguishable from the explosives of interest.

General Requirements

The ETD must operate effectively, efficiently, and reliably in an airport environment, with a reasonable nuisance alarm rate. To achieve certification, the system must demonstrate the ability to achieve operational requirements when used in the assigned mission role by representative operators provided with procedures. Additionally, the ETD must demonstrate a capability to sustain mission readiness when maintained by trained personnel using the defined maintenance schedule and procedures.

TSA will certify ETD equipment based upon the criteria. TSA will also develop a list of certified equipment that is eligible for use in screening baggage (the Qualified Vendor Listing or QVL) in airport operations.

The ETD must be approved by Underwriters Laboratory or equivalent, and if it employs a radioactive source, be licensed by the Nuclear Regulatory Commission (NRC). Radiation safety procedures must exist for each ETD containing radioactive materials to ensure compliance with pertinent regulations.

The vendor must provide data certifying that the ETD and associated test equipment and tools meet the personnel and facility safety requirements specified by the Occupational Safety and Health Administration (OSHA) regulations and the National Electrical Code.

The vendor must provide a general license to allow TSA, air carriers, and airport operators the legal right to operate the ETD without limitation for each location of installation and operation.

TSA will certify only complete turnkey systems. TSA will not certify, or allow for use, individual components. Prior to final certification, TSA will require vendors to provide a complete baseline system with documentation. This documentation must include, but is not limited to: recommended system installation procedures with power and telecommunications requirements; calibration and sample collection procedures; minimum essential test equipment and devices; routine field testing and calibration procedures and test objects to be used; routine and emergency operating procedures; field preventative maintenance and repair procedures; and training programs.

Detection Requirements

The ETD must demonstrate a very high probability of detection for each category of explosive. The ETD must detect and identify the explosives at the trace levels specified in the sensitive criteria when employed in the operational environment by representative personnel. The sensitive criteria identify the types and quantities of explosive materials (explosive trace) that must be detected, the minimum detection rate for each category of explosive, and the overall detection and maximum nuisance alarm rates. The criteria also specifies the requirement to detect the minimum quantity and larger quantities of each listed explosive.

The ETD must detect and differentiate explosive materials from among all other materials that might be found deposited on a surface of interest, whether on the inside or outside of the baggage or its contents.

The ETD, either as sold or with modification, must also be capable of field retrofit to identify new threats, including the marking agents for plastic explosives required by Public Law 104–132.

The ETD must have a clear-down time specified in the sensitive criteria.

Operational Requirements

The ETD must have a sampling method. The sampling method must provide for effective sampling from the variety of surfaces shapes, contours, and textures encountered in baggage and their contents. The sampling method must have sufficient flexibility to sample all potential areas of interest on and in the bag. The sampling method may be automated, and must be usable by the average baggage screener.

The ETD sampling method must not cause damage visible to the naked eye or significant residual alteration of the screened subject(s) or its contents. Assume there will not be sample acquisition from scratch-sensitive surfaces such as laptop computer screens and camera lenses.

The ETD must display data using a built-in monitor and be viewable in normal lighting conditions using a glare-free screen. The monitor must be at least two inches on each side.

The ETD must display a message on the monitor that identifies the explosive detected.

The ETD must provide notification of NON-Detection by displaying a message on the monitor.

The ETD must provide notification of detection of explosives by aural alarms.

The ETD must provide a printed record indicating all available information associated with the alarm. The information must be sufficient for analysis of the sample, assistance in troubleshooting, and diagnosis of problems.

The ETD's human-system interface, including displays, printed records of detection activity, visual and auditory alarms, and others, should conform to applicable provisions of DOT/FAA/CT–96/1 (Human Factors Engineering Design Guide for Non-Developmental and Developmental Items) for use by 5th percentile female through 95th percentile male users. Additionally, displays should conform to industry conventions for Graphical User Interface (GUI) or Object-Oriented User Interface (OOUI) designs where GUI or OOUI displays are present. Displayed information must be heuristically appropriate and based on operator and maintainer task requirements.

The ETD must be capable of processing a minimum of 180 samples per hour when no alarms are present (not including acquiring the sample). This time includes machine processing and analysis.

The ETD must operate on 110 volt typical airport power.

The ETD must be capable of being safely, effectively, and efficiently operated and maintained in its fielded configuration under all possible operating conditions (*e.g.*, environment: lighting, and noise) by trained personnel using the procedures provided by the vendor.

The ETD must be capable of being shut down, transported by one individual to a new site, reinstalled, and placed in an operational ready mode within a one hour period.

The vendor must provide routine updates, upgrades, design modifications, and corrective performance improvements. A decision will be made by TSA if incorporating the upgrades require the vendor to re-certify the ETD. The vendor must notify and obtain written approval from TSA, in accordance with the Configuration Management Plan (CMP), before incorporating any adaptation, update or upgrade of TSA deployed hardware, software, or firmware.

Reliability Requirements

The ETD must demonstrate a mission reliability of 95% where mission reliability is defined as the ability of the

system to complete any given shift once operations are commenced.

The ETD must be available for sample testing 95% of the time (defined as the availability of the unit to support the mission at any given time during any 24 hour period).

The vendor must provide a maintenance schedule and maintenance procedures for the fielded configuration item that can be accomplished by site operator and maintenance personnel. The ETD must require less than an average of 30 minutes of general/preventive maintenance per day.

The ETD must have a MTTR of less than 4 and a maximum time to repair of 24 hours including cool-down, disassembly, reassembly, warm-up, verification of operation, and further diagnosis as required. The MTTR should be based on repair by a factory-trained technician.

Data Processing Requirements

The ETD must provide data processing capability with an internal processor. This processor must be at a minimum equivalent to the 80486 processor. The ETD must provide data directly to the TSA. The data elements are ''system'' and ''transaction'' data defined in the Certification Plan.

Training Requirements

The ETD must demonstrate the capability to be operated and maintained by trained personnel; the training program must be matched and attuned to the skill level, qualifications, and capacity of current ETD operators and supervisors performing similar baggage inspection functions. The system must be delivered with technical documentation which at a minimum will consist of two System Technical Manuals to support the ETD: (1) an Operations Manual to support operations; and (2) a Maintenance Manual to support maintenance performed by technicians at the System sites.

Certification Requirements

As required by the Certification Plan, vendors seeking TSA certification for an ETD must submit complete descriptive data, manuals, and airport test results to TSA prior to receiving permission to ship the ETD to the TSA Technical Center. TSA reserves the right to visit a vendor's facilities for technical quality assurance and configuration management purposes, require and/or monitor in-house tests, and review associated data prior to granting permission to ship equipment for certification testing.

The vendor must provide documentation describing the ETD configuration management and quality assurance plans and practices applied during system development, production, and test and evaluation.

Before the system is accepted for laboratory detection testing it must have been used in an airport and have processed over 4,000 bags. TSA will provide, on request, up to 100 sample test articles for use in the airport environment to allow realistic detection testing. Data from these tests may be used to help establish the appropriate alarm threshold and to evaluate various sampling tools and procedures. Nuisance alarm rates must be reported at the alarm threshold setting to be used in the laboratory testing. Additionally, the data on detection (based upon a set of 50 test articles), reliability and operational availability must be recorded and submitted as part of the pre-certification documentation.

The TSA Research and Development Technical Center in Atlantic City, New Jersey will perform certification tests for producers of candidate ETDs. The ETD Certification Test Director in the Office of Transportation Security Research and Development is the point of contact.

After the ETD has demonstrated an acceptable level of detection in the laboratory, TSA will take the system to an airport to exercise and test the sample acquisition system and acquire nuisance alarm and reliability data by sampling at least 1,000 passenger bags.

Operational field test and evaluation of the ETD is a critical component of the trace detector certification process. Using the same configuration demonstrated in the laboratory test, the ETD must demonstrate compliance with appropriate operational requirements, including usability, appropriately low nuisance alarm rates, automated data collection and retrieval capability, security protocols, reliability, maintainability, supportability, ease of use and transportability.

Considerations for the Qualified Vendors Listing (QVL)

In addition to the mandatory Criteria discussed above, there are a number of other operational considerations that will influence any future TSA decision to place the equipment on the QVL. The QVL is the list of equipment that is eligible for TSA to purchase, deploy, and use ETD for screening baggage. While these considerations are not mandatory for certification of ETD, TSA highly recommends that vendors factor these considerations into development and design decisions. While such trade-offs may not affect certification under these Criteria, they will be considered during decision making regarding purchase and deployment of certified ETD. A detailed discussion of these economic and operational concerns are addressed in the Certification Plan.

Authority: Pub. L. 107–71, 115 Stat. 597 (3001).

Dated: July 15, 2002.

John W. Magaw,

Under Secretary of Transportation for Security.

[FR Doc. 02–18611 Filed 7–23–02; 8:45 am]

BILLING CODE 4910–62–P

Corrections

Federal Register
Vol. 67, No. 142
Wednesday, July 24, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–44–AD; Amendment 39–12822; AD 2002–14–22]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

Correction

In rule document 02–17602 beginning on page 46582 in the issue of Tuesday, July 16, 2002 make the following corrections:

§ 39.13 [Corrected]

1. On page 46583, in §39.13, in the table, under ''Actions'', in paragraph (1), in the second line, ''bold'' should read ''bolt''.

2. On the same page, in §39.13, in the same table, under ''Actions'', in paragraph (3), in the third line, ''bolt'' should read ''both''.

[FR Doc. C2–17602 Filed 7–23–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
July 24, 2002

Part II

Securities and Exchange Commission

17 CFR Part 270
Investment Company Mergers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25666; File No. S7–21–01]

RIN 3235–AH81

Investment Company Mergers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to the rule under the Investment Company Act of 1940 that permits mergers and other business combinations between certain affiliated investment companies. The amendments expand the types of business combinations permitted by the rule and make the rule available for mergers between registered investment companies and certain unregistered entities. The amendments are designed to reduce burdens on investment companies by eliminating the need to obtain Commission approval for mergers that present little risk of overreaching.

DATES: *Effective Date:* July 26, 2002.

Compliance Date: October 25, 2002. Section II of this document contains more information on transition prior to the compliance date.

FOR FURTHER INFORMATION CONTACT: Robert S. Kim, Attorney, at (202) 942–7961, or Martha B. Peterson, Special Counsel, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission today is adopting amendments to rule 17a–8 [17 CFR 270.17a–8] under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act'' or ''Act'').

Table of Contents

Executive Summary

The Commission is adopting amendments to rule 17a–8 under the Investment Company Act, the rule that permits mergers of registered investment companies (''funds'') with certain of their affiliated persons.[1] The amendments expand the availability of the rule in two ways: first, the rule permits funds to merge with other affiliated funds without regard to the reason for their affiliation; and second, the rule permits funds to merge with unregistered bank common trust funds, bank collective trust funds, and unregistered insurance company separate accounts. The amendments subject the exemption to certain additional conditions designed to protect investors.

I. Discussion

Section 17 of the Investment Company Act prohibits certain transactions between funds[2] and their affiliated persons[3] unless the Commission issues an order after finding that (i) the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, (ii) the proposed transaction is consistent with the policy of each fund, and (iii) the proposed transaction is consistent with the general purposes of the Act.[4] This section operates to prohibit mergers[5] of investment companies that are affiliated persons of each other, which typically include funds that are in the same fund complex.[6] Since 1980, our rule 17a–8 has permitted mergers of funds that are affiliated solely because they have common investment advisers, officers and/or directors.[7] We have considered other fund mergers on a case-by-case basis, and since 1980 we have issued more than 150 orders granting exemptions for fund mergers that did not qualify for relief under rule 17a-8.[8]

In November 2001, we proposed to codify the terms of our exemptive orders and expand the availability of rule 17a–8 to permit affiliated mergers regardless of the reasons for the funds' affiliation, and to permit funds to merge with unregistered bank common and collective trust funds.[9] We received eight comments on the proposed amendments to rule 17a–8.[10] Commenters supported the proposed broadening of the rule, but suggested changes. Today we are adopting the amendments to rule 17a–8, with several changes that respond to issues raised by commenters. The amended rule, which we describe below, will permit most mergers of registered investment

[1] Unless otherwise noted, when we refer to rule 17a–8 or any paragraph of that rule, we are referring to 17 CFR 270.17a–8, the section of the Code of Federal Regulations in which the rule is published, as amended by this release.

[2] We use the term ''fund'' throughout this release to refer to registered investment companies and series of registered investment companies that are series companies.

[3] The Act describes an ''affiliated person'' of another person as (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting securities of such other person; (B) any person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof. 15 U.S.C. 80a–2(a)(3). Unless otherwise noted, in this release, we will use the term ''affiliate'' to include affiliated persons of the fund and affiliated persons of those affiliated persons. Section 17(a) also reaches transactions with a promoter of or a principal underwriter for a fund and affiliated persons of such promoter or principal underwriter. For purposes of this release, the term ''affiliates'' includes these persons as well.

[4] 15 U.S.C. 80a–17(a)–(b).

[5] We use the term ''merger'' in rule 17a–8 and this release to refer to a merger, consolidation, or purchase or sale of substantially all of an entity's assets. Rule 17a–8(b)(1). A fund merger typically occurs in one of three ways, each of which involves the purchase or sale of fund assets: (i) One fund purchases the portfolio assets of the other; (ii) one fund purchases all securities issued by the other; or (iii) securities issued by one fund are exchanged for all or substantially all of the portfolio assets of the other fund.

[6] Funds in a fund complex are under the common control of an investment adviser or other person when the adviser or other person exercises a controlling influence over the management or policies of the funds. 15 U.S.C. 80a–2(a)(9). Not all advisers control the funds they advise. The determination of whether a fund is under the control of its adviser, officers, or directors depends on the relevant facts and circumstances. Throughout this release we presume that the funds in a fund complex are under common control, because funds that are *not* affiliated would not need relief under rule 17a–8.

[7] *See* Mergers and Consolidations Involving Registered Investment Companies, Investment Company Act Release No. 11053 (Feb. 19, 1980) [45 FR 12408 (Feb. 26, 1980)].

[8] Typically a single order provides an exemption for multiple funds. The 16 orders we issued in 2001 provided exemptions for 120 mergers involving approximately 220 funds.

[9] Investment Company Mergers, Investment Company Act Release No. 25259 (Nov. 8, 2001) [66 FR 57602 (Nov. 15, 2001)] (''Proposing Release'').

[10] The comment letters and a summary of comments prepared by our staff are available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC (File No. S7–21–01). The comment summary is also available on the Commission's Internet Web site *(http://www.sec.gov/rules/extra/s72101commsumm.htm).*

companies to proceed without the need for exemptive relief.

A. Mergers Between Registered Investment Companies

The Commission is adopting, as proposed, an amendment to rule 17a-8 to permit affiliated fund mergers regardless of the reasons for the funds' affiliation.[11] The rule will continue to require that each fund's board (including a majority of disinterested directors) determine that the merger is in the best interests of the fund and will not dilute the interests of shareholders.[12] These are critical determinations boards must carefully consider, particularly when the merger involves significant conflicts of interest.[13] Directors must request and evaluate any information reasonably necessary to their determinations, and consider and give appropriate weight to all pertinent factors in making their findings under the rule, and in fulfilling the overall duty of care they owe to the fund's shareholders.[14] In making their determinations, boards should consider, if relevant, the following factors, among others [15]—

- Any fees or expenses that will be borne directly or indirectly by the fund in connection with the merger;[16]
- Any effect of the merger on annual fund operating expenses and shareholder fees and services;
- Any change in the fund's investment objectives, restrictions, and policies that will result from the merger; and
- Any direct or indirect federal income tax consequences of the merger to fund shareholders.

We do not intend the list of factors to be exhaustive, and none of the factors would necessarily be determinative. Consideration of these specific factors does not relieve a board of the obligation to consider other relevant factors.[17]

We are also adopting an amendment that requires the acquired fund, in a merger relying on rule 17a-8, to have the merger approved by its shareholders in certain circumstances.[18] In the Proposing Release we expressed concern that funds were increasingly organized (or reorganized) under state laws that did not require shareholder approval of mergers, which could deny shareholders a voice in an important change in their investment.[19] Most commenters supported requiring acquired companies to obtain shareholder approval, but in light of the costs of proxy solicitations, urged us to limit the requirement. One commenter recommended that we require shareholder approval only when the merger would result in a change that, in a context other than a merger, would require a shareholder vote under the Investment Company Act. We believe such an approach has merit because it would preserve important values embodied in the Investment Company Act while reducing the need for a fund to incur the expense of soliciting proxies when the merger may not raise significant issues for shareholders.

Under rule 17a-8, as we are today amending it, reliance on the rule requires the acquired fund to obtain the approval of a majority of its shareholders [20] in circumstances that we have derived from various provisions of the Act and our rules that specify when a fund must obtain the approval of its shareholders.[21] Under the rule as amended a majority of the shareholders of the acquired fund must approve the merger if—

- Any policy of the acquired fund that under section 13 of the Act could not be changed without a vote of a majority of its outstanding voting securities is materially different from a policy of the acquiring fund;[22]
- The acquiring fund's advisory contract is materially different from that of the acquired fund, except for the identity of the funds as parties to the contract;[23]

[11] Rule 17a-8(a).

[12] Rule 17a-8(a)(2)(i). We are not adopting a proposal to prohibit funds from relying on rule 17a-8 to effect mergers that are part of a plan or scheme to evade the prohibitions of section 17(a) of the Act; section 48(a) of the Act already makes such activity unlawful. 15 U.S.C. 80a-47(a).

[13] In January 2001, we amended rule 17a-8 to include conditions related to independent directors of a merging fund. Under those amendments, relief is conditioned on (i) a majority of the board of directors of each fund relying on the rule being independent directors, (ii) the independent directors of any fund relying on the rule selecting and nominating any other independent directors, and (iii) any legal counsel for the independent directors of the fund relying on the rule being an independent legal counsel. *See* rule 17a-8(a)(4). *See also* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)].

[14] Rule 17a-8(a)(2)(ii).

[15] In the proposal, we identified these factors in the text of the rule itself. *See* proposed rule 17a-8(a)(2)(ii). Consistent with our judgment to continue to rely on the exercise of judgment by the directors (including the disinterested directors), and because these factors only represent examples of factors that may be relevant, we have decided not to include the factors in the rule text. Instead, we have included a note in the rule to refer readers to this release. As such, the factors do not represent legal requirements. While it is true that the directors may not have to consider all of these factors, it is equally true that consideration of these factors may not suffice if the directors have not considered other relevant factors. In all cases, the directors must make their own determination as to what factors are relevant to making their findings under the rule.

[16] Directors should consider in particular whether the fund's payment of fees and expenses that would otherwise be paid by the fund's investment adviser raises questions under section 15(a)(1) [15 U.S.C. 80a-15(a)(1)] (advisory contract must precisely describe all compensation to be paid under the contract) and section 36(b) [15 U.S.C. 80a-35(b)] (investment adviser has fiduciary duty with respect to the receipt of compensation for services, or of payments of a material nature, paid by the fund or its shareholders). In addition, if the fund merger follows a merger of the fund's investment adviser, then the fund's payment of fees and expenses might constitute compensation to the investment adviser and raise questions regarding the availability of section 15(f) [15 U.S.C. 80a-15(f)] (creating a safe harbor under which investment advisers may receive a benefit in connection with a sale of securities of, or a sale of any other interest in, an investment adviser that results in an assignment of an investment advisory contract, if certain conditions are met).

[17] *See supra* note 15.

[18] In some cases rule 17a-8 may permit a merger to occur without shareholder approval, but state law or the fund's organizational documents may require shareholder approval. Nothing in rule 17a-8 relieves a fund of its obligations in this regard under state law or its organizational documents. We also proposed, but are not adopting, an amendment that would have required certain shareholders to ''echo vote'' their securities. Commenters pointed out that echo voting would be costly and complex, and that seeking instructions from beneficial owners could be contrary to the terms of underlying legal arrangements. Advisers (and their affiliated persons) that are also fund shareholders should carefully consider their fiduciary responsibilities to the fund when deciding how to cast their votes. We understand that it is a common practice for advisers with conflicting obligations to vote their shares in a manner similar to that which we proposed.

[19] Proposing Release, *supra* note 9, at text accompanying nn.37–41.

[20] The amended rule requires a ''vote of a majority of the outstanding voting securities,'' as described in section 2(a)(42) of the Act. Rule 17a-8(a)(3). We have added this provision in response to a comment that shareholder votes required under rule 17a-8 be subject to the Act's requirements for majority approval. *Cf.* Proposing Release, *supra* note 9, at n.41.

[21] We have not included the identical requirements because the application of such requirements in the context of a merger would not work, or might require a shareholder vote in all circumstances.

[22] Rule 17a–8(a)(3)(i). Under section 13 of the Act no fund may, unless authorized by the vote of a majority of its outstanding voting securities: (1) change between being an open- and closed-end investment company or from being a diversified to a nondiversified company; (2) borrow money, issue senior securities, underwrite securities issued by other persons, purchase or sell real estate or commodities, or make loans to other persons, except in accordance with the recitals of policies contained in the fund's registration statement; (3) deviate from any investment policy that is changeable only by shareholder vote or any policy that is ''fundamental'' under section 8(b)(3) of the Act; or (4) change the nature of its business so as to cease to be an investment company. 15 U.S.C. 80a–13(a)(3).

[23] :Rule 17a–8(a)(3)(ii). *See* 15 U.S.C. 80a–15 (requiring shareholder approval of advisory contracts). We interpret section 15(a) to require shareholder approval of only material changes to an advisory contract, and thus have drafted the rule in a manner that reflects that interpretation. If, after the merger, the advisory fees payable by the acquiring fund will be greater than the advisory fees of the acquired fund, we would consider the

Continued

• After the merger, directors of the acquired fund who are not interested persons of the acquired fund and who were elected by its shareholders will not comprise a majority of the directors of the acquiring fund who are not interested persons of the acquiring fund;[24] or

• After the merger, the acquiring fund will be authorized to pay charges under a plan that provides for use of fund assets for distribution (''rule 12b–1 plan'') that are greater than charges authorized to be paid by the acquired fund under such a plan.[25]

We are also adopting, as proposed, a requirement that each investment company that survives the merger preserve written records that document the merger and its terms.[26] The records must include, among other things, the minute books setting forth the determinations of the funds' boards and the bases for those determinations, any supporting documents provided to the directors in connection with the merger, and documentation of the prices at which securities were transferred in the merger.[27] The recordkeeping requirement ensures that we have adequate information to assess the merging funds' compliance with the rule's conditions.

B. Mergers of Registered Investment Companies and Certain Unregistered Entities

We are expanding the exemption provided by rule 17a–8 to permit funds to merge with affiliated persons that are bank common trust funds,[28] bank collective trust funds,[29] and unregistered insurance company separate accounts,[30] provided that the survivor is a registered investment company.[31] We did not propose to permit mergers with unregistered insurance company separate accounts. One commenter pointed out, and we agree, that the issues raised by mergers with that type of account are similar to the issues raised by mergers with bank common and collective trust funds.

We are also adopting a requirement that the board of directors of a fund that merges with an unregistered trust fund or account, in making its determination that the interests of the fund's shareholders will not be diluted as a result of the merger, approve procedures for the valuation of the securities (or other assets) that the unregistered entity will convey to the fund.[32] These procedures must provide for the preparation of a report by an independent evaluator[33] that sets forth the fair market value of any such assets for which market quotations are not readily available.[34] The independent evaluator's report must be included in the records of the merger.[35]

II. Effective Date

The amendments to rule 17a-8 will be effective on July 26, 2002. The Administrative Procedure Act generally provides that a substantive rule may become effective no less than 30 days after publication in the **Federal Register**.[36] Nevertheless, we may establish an effective date that is less than 30 days after publication for rule amendments that grant or recognize an exemption or relieve a restriction.[37] Today's amendments meet these criteria, because the amendments exempt certain fund mergers from the prohibition in section 17(a).

Persons entering into mergers that occur on or after October 25, 2002 (''compliance date'') must comply with the conditions in rule 17a-8 as amended in order to rely on the exemption in the rule. Persons entering into mergers that occur between July 26, 2002 and the compliance date may rely on either rule 17a-8 as amended, or rule 17a-8 as it existed prior to today's amendments.

III. Cost-Benefit Analysis

We are sensitive to the costs and benefits imposed by our rules. The amendments to rule 17a-8 are designed to reduce costs incurred by funds and advisers by eliminating the need for Commission approval of certain fund mergers. The amendments also supplement existing conditions of the rule, in order to ensure continued protection of fund shareholders in connection with mergers of funds and their affiliates. The Commission has identified certain costs, which are discussed below, that may result from the rule amendments. The rule amendments are exemptive, rather than prescriptive, and funds are not required to rely on them. Therefore, we assume that funds will rely on the rule amendments only if the anticipated benefit from doing so exceeds the anticipated cost. We did not receive any data regarding the costs and benefits of the rule amendments from commenters.

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increase in the advisory fee to be a material change requiring shareholder approval.

[24] Rule 17a–8(a)(3)(iii). In other words, a shareholder vote is *not* required if, after the merger, a majority of the disinterested directors of the acquiring company will be comprised of persons who were elected disinterested directors of the acquired company.

[25] Rule 17a-8(a)(3)(iv). *See* rule 12b–1 under the Investment Company Act [17 CFR 270.12b–1] (describing circumstances in which an open-end management investment company may bear expenses associated with the distribution of its shares).

[26] :Rule 17a–8(a)(5) (requiring the company to keep these records for six years after the merger and, for the first two years, in an easily accessible place).

[27] Rule 17a–8(a)(2)(iv). The merger records also must include any report of an independent evaluator necessary for compliance with rule 17a–8(a)(2)(iii). *See infra* Section I.B.

[28] Generally, common trust funds and similar funds are exempt from registration under section 3(c)(3) of the Act [15 U.S.C. 80a–3(c)(3)]. *See* Proposing Release, *supra* note 9, at n.48.

[29] Collective trust funds are exempt from registration under section 3(c)(11) of the Act [15 U.S.C. 80a–3(c)(11)]. *See* Proposing Release, *supra* note 9, at n.49.

[30] Separate accounts are described in section 2(a)(37) of the Act [15 U.S.C. 80a–2(a)(37)].

[31] Rule 17a–8(a)(1). As we discussed in the Proposing Release, the staff has written no-action letters in the past under section 17(a) and rule 17a–7 to funds seeking to merge with unregistered entities. Proposing Release, *supra* note 9, at n.54. Parties to mergers that occur on or after the compliance date of the amendments to rule 17a–8 should not rely on the guidance in those letters. Parties to such mergers must either (i) comply with rule 17a–8 or another applicable rule or (ii) obtain an exemptive order from the Commission under section 17(b). A merger that is conducted in reliance on rule 17a–7 must comply with all of the conditions of that rule, including the requirement that the transaction be for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available. *See* 17 CFR 270.17a–7(a).

[32] Rule 17a-8(a)(2)(iii).

[33] An ''independent evaluator'' is a person having expertise in the valuation of securities and other financial assets who is not an interested person of the unregistered entity or any of its affiliated persons, other than the fund. Rule 17a-8(b)(3).

[34] Rule 17a-8(a)(2)(iii). This provision requires the directors to obtain a report from an independent evaluator valuing those securities for which the directors will have to determine fair value for purposes of computing the net asset value of the fund's shares subsequent to the merger. *See* 17 CFR 270.2a–4(a). A number of commenters incorrectly assumed that our proposal would require the fund to accept the opinion of the independent evaluator and expressed a concern that the rule might require the fund to accept valuations for the purpose of the merger that it would not subsequently use, which would require a readjustment of values. The rule amendment essentially requires the board to receive a ''second opinion'' from an independent evaluator, which the board can use when considering the asset valuations that may have been prepared by a person that has an interest in the transaction. Although a board is free under the rule to reject the opinion, it should use caution in accepting a valuation by a person that has an interest in the merger when that person's valuation is materially different from that of the independent evaluator. The proposed amendments would have required that the independent evaluator's report include valuations for all securities to be conveyed to the acquiring fund. The rule amendments that we are adopting limit this requirement to securities for which market quotations are not readily available. Commenters expressed concern about the cost to funds of obtaining reports from independent evaluators, and we do not believe that it is necessary to require reports that value securities for which market quotations are readily available.

[35] Rule 17a-8(a)(5).

[36] 5 U.S.C. 553(d).

[37] 5 U.S.C. 553(d)(1).

A. Benefits

We anticipate that funds, their shareholders, and their advisers and other affiliates will benefit from the expansion of the rule to include mergers of affiliated funds, regardless of the nature of the affiliation, and mergers with common or collective trust funds and unregistered insurance company separate accounts. More merging funds will be able to rely on the rule and therefore will not have to obtain exemptive relief, which can be costly to merging funds, their shareholders, and their affiliates.[38] Thus, the amendments will remove an obstacle to mergers of affiliated funds and can thereby reduce the costs of affiliated mergers. Investment advisers also can benefit from the greater ease with which mergers can be effected under the amended rule because they often bear all or a portion of the costs of obtaining exemptive relief.[39]

The Commission staff anticipates that eliminating the need for merging funds to obtain individualized exemptive relief would not cause a significant increase in the number of mergers. However, to the extent that the number of mergers increases, mergers give shareholders of small or poorly performing funds an opportunity to shift their assets to a better performing fund without negative tax consequences.[40] In addition, investment advisers can realize economies of scale through fund mergers, which spread the costs of management, some of which are fixed, across a larger pool of assets. Shareholders may benefit from these economies of scale in the form of lower fees and expenses.[41]

We believe that the amendments, in addition to reducing costs faced by funds in connection with mergers, also may enhance the protections afforded by the rule to fund shareholders. We believe that the provision conditioning relief on the directors requesting and evaluating such information as may reasonably be necessary to determine whether the merger is in the best interests of the fund and will not dilute the interests of the fund's existing shareholders will encourage director scrutiny of fund mergers. Conditioning the rule's relief in certain circumstances on approval of the merger by a majority of the outstanding voting securities of an acquired fund can benefit fund shareholders by giving them an opportunity to assess the merger in light of their own financial circumstances. Submitting the merger to a vote, we believe, may improve its terms since the fund managers must persuade investors to approve them. Finally, we believe that the amended rule's recordkeeping requirements will ensure that our examinations staff will be able to assess merging funds' compliance with the rule.

B. Costs

Merging funds that choose to rely on rule 17a-8, and their advisers, will incur certain costs in complying with the rule's conditions. The supplemental conditions included in the amendments, together with the increased numbers of merging funds likely to rely on the rule, may result in an increase in the aggregate annual cost of compliance with rule 17a-8.

The amendments would eliminate the expenses of filing an exemptive application for certain merging funds.[42] Unlike the expense of complying with rule 17a-8, however, the cost of an exemptive application may be shared by a number of merging funds. Therefore, there may be certain increased compliance costs under the amended rule for these merging funds.[43] In addition, some merging funds that would have been able to comply with rule 17a-8 prior to the amendments may face higher costs under the amendments.[44] Finally, funds merging with eligible unregistered funds will be able to avoid the expense of filing an exemptive application, but some funds may incur greater costs under the rule than they would have incurred otherwise, such as higher valuation costs because of the required independent evaluator's report.

The rule is intended to ensure that boards thoroughly review merger transactions and their terms. Even in the absence of the amended rule, fund boards would meet to consider the merger; as a result, the incremental costs attributable to the board determination requirements of rule 17a-8 are likely to be minimal.

In conjunction with the expansion of the rule to unregistered entities, the amendments require that fund boards establish procedures for valuing the assets held by any eligible unregistered funds participating in the merger. If the unregistered entity will convey assets to the fund for which market quotations are not readily available, then the valuation procedures must include the preparation of a report by an independent evaluator. The staff estimates that this requirement will impose an aggregate annual cost of approximately $195,000.[45]

We believe that there will be few additional shareholder votes annually as a result of the requirement in rule 17a-8 that shareholders of the acquired fund approve certain fund mergers.[46] Currently, in most (if not all) cases acquired funds obtain approval of their shareholders before engaging in mergers that materially alter the investment held by fund shareholders. The staff estimates that the cost of obtaining

[38] In calendar year 2000, exemptive orders were issued for over 30% of affiliated fund mergers. We believe that these mergers would have been able to proceed under amended rule 17a-8. As set forth in Section V below, we anticipate that there will be approximately 400 affiliated fund mergers annually. Thus, assuming that 30% of these would have had to proceed under an exemptive order, annually approximately 120 mergers for which individualized exemptive relief would have been necessary will now be able to proceed under the rule. The Commission staff estimates, based on conversations with persons who have prepared exemptive applications for merger-related relief under section 17(b), that it costs an average of $36,000 to obtain an exemptive order permitting mergers of multiple portfolios of one or more affiliated registered investment companies. As discussed below, some funds may incur costs in complying with the rule's conditions that they otherwise would not have incurred. *See infra* Section III.B.

[39] The costs of a fund merger may be borne totally or in part by the investment adviser to one or both of the merging funds or may be borne by one or both of the merging funds. The allocation of costs of the merger is a product of negotiation between the boards of the merging funds and their investment adviser(s).

[40] Liquidations are generally taxable events for fund shareholders, whereas fund mergers can be structured to be non-taxable.

[41] *See* Narayanan Jayaraman, *et al., An Analysis of the Determinants and Shareholder Wealth Effects of Mutual Fund Mergers,* 57 J.Fin. 1521 (2002) (finding that target shareholders benefit from improved performance and lower expense ratios).

[42] *See supra* note and accompanying text.

[43] Except in rare circumstances, it is unlikely that funds will experience significantly higher costs in conducting a merger under the amended rule. *See infra* notes 46–47 and accompanying text (discussing costs associated with conducting a shareholder vote).

[44] These increased costs may be attributable to the amended rule's requirements regarding board determinations, shareholder voting provisions, and/or recordkeeping requirements.

[45] The staff estimates, based on a review of fund filings, that there will be approximately 13 mergers each year involving common or collective trust funds or unregistered separate accounts. The staff also estimates, based on discussions with professionals who have prepared similar valuation reports, that the preparation of an independent evaluator's report in these instances would cost approximately $15,000. This cost could, however, be considerably higher depending on the number and characteristics of the securities that are being valued.

[46] For purposes of our Paperwork Reduction Act analysis, we assumed that twenty funds each year will be affected. *See infra* Section V. Our staff rarely sees fund mergers in which there is no shareholder vote. Many funds are required by state law or the fund's organizational documents to conduct a shareholder vote in the event of a merger. Even funds that are not required to obtain shareholder approval may do so in order to maintain good relations with their shareholders.

shareholder approval for a fund merger is approximately $75,000.[47]

We believe that the incremental costs associated with the recordkeeping requirements in amended rule 17a-8 will not be significant. We believe that most funds already retain the types of records that are required by the amended rule as a matter of good business practice. Prior to the amendments, the rule required that the directors' findings and their bases be recorded in the minute books of the fund. The amended rule retains this requirement at what we anticipate will continue to be a minimal cost.[48] The amended rule also requires the acquiring fund to retain written records describing the merger and its terms. The six-year retention period is consistent with the retention period applicable to similar fund records.[49] We believe, therefore, that the recordkeeping requirement is unlikely to impose significant additional costs on funds.

IV. Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[50] None of the commenters addressed these issues.

Today's amendments to rule 17a–8 are intended to make the rule available for more affiliated fund mergers, thereby eliminating the need for specific exemptive relief in most cases.[51]

The rule amendments will expedite many mergers that, prior to the amendments, could proceed only if we issued an exemptive order. These mergers will now be less costly to the merging funds, their shareholders, and their affiliates. It is possible that reducing the cost of mergers will induce more funds to combine, thereby increasing industry concentration. We do not, however, believe that the cost of obtaining a Commission exemptive order is a significant factor in funds' decisions to enter into mergers, and we do not anticipate that the rule amendments will significantly increase or decrease the number of mergers that occur annually; therefore, the amendments will not have a significant direct effect on efficiency, competition, or capital formation.[52]

The amendments may have certain secondary effects on efficiency and competition. By eliminating disparities in the costs incurred by affiliated funds that would have been able to merge under the rule prior to the amendments, versus those that would have merged through an exemptive order, the amendments may have a positive effect on competition. On the other hand, because (as discussed above) a small number of funds that would have been able to merge under the rule prior to the amendments may incur higher costs under the amended rule, the amendments may have a negative effect on efficiency. However, we do not anticipate that either effect will be significant.

V. Paperwork Reduction Act

As explained in the Proposing Release, the amendments to rule 17a-8 expand the rule's scope and add new conditions to the rule, some of which constitute new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We submitted these proposals to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Rule 17a–8 under the Investment Company Act of 1940 [17 CFR 270.17a–8], ''Mergers of Certain Affiliated Investment Companies.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The OMB control number for amended rule 17a–8 is 3235–0235.

As discussed above, today we are adopting amendments to rule 17a–8 that are substantially similar to amendments that we proposed in November 2001. None of the commenters addressed the Paperwork Reduction Act burden associated with these amendments.

The staff believes that the amendments will increase the annual hour burden associated with the rule, which is currently estimated to be 120 hours, and introduce an annual cost burden associated with the rule for purposes of the Paperwork Reduction Act. Because rule 17a–8 is an exemptive rule, funds may choose whether to rely on it. Therefore, any information provided under rule 17a–8 would be provided voluntarily. The amendments do not require that information be provided to the Commission, and thus this release does not address the confidentiality of responses under the amendments to rule 17a–8.

We anticipate that most if not all funds that engage in mergers with affiliated funds will rely on rule 17a-8. Assuming that there will be approximately 400 mergers between affiliated funds or fund portfolios annually, we estimate that approximately 800 registered investment companies, or, in many cases, portfolios or series thereof, would be subject to the rule's information collection requirements annually.[53] The Commission staff estimates that merging funds would spend annually an aggregate of 600 hours—200 hours of professional time and 400 hours of clerical time—recording the relevant determinations of the boards of directors and preserving written records of the mergers and their terms.[54] The

[47] This estimate, which is based on conversations with representatives of funds and service providers, includes the legal, mailing, printing, solicitation, and tabulation costs associated with a shareholder vote. For the estimated twenty affected funds, the annual aggregate cost of holding a shareholder vote (at a cost of $75,000 per fund) would be approximately $1,500,000. However, the cost of holding a shareholder vote would be offset by an affected fund avoiding the cost of sending shareholders an information statement. *See* 15 U.S.C. 78n(c) (providing that prior to any meeting of its shareholders with respect to which proxies are not solicited, an investment company must, in accordance with Commission rules, file with the Commission and transmit to all shareholders of record information substantially equivalent to the information which would be required to be transmitted if a solicitation were made). Our staff estimates, based on discussions with industry participants, that the cost of preparing and delivering an information statement is $30,000. Thus, we estimate that there will be an aggregate cost savings of $600,000 resulting in a net annual aggregate cost of holding a shareholder vote of approximately $900,000.

[48] For purposes of the Paperwork Reduction Act analysis, the staff estimates that personnel of each fund will spend approximately .75 hours (.25 hours of professional time and .5 hours of clerical time) to satisfy the amended rule's recordkeeping requirements in connection with a merger. *See infra* Section V.

[49] *See* rule 31a–2 [17 CFR 270.31a–2].

[50] 15 U.S.C. 80a–2(c). We are adopting the amendments to rule 17a–8 pursuant to the authority in section 6(c) and 38(a) of the Act. As rules that we adopt under section 6(c) must be ''necessary or appropriate in the public interest,'' the requirements of section 2(c) apply to the rule amendments.

[51] *See supra* Section III.

[52] *See supra* Section III.A. for a discussion of the cost savings.

[53] The staff estimate of approximately 400 mergers annually is higher than the approximately 279 mergers predicted for calendar year 2002 by a simple linear projection of merger data from 1993 through 2000. The staff believes, based on an evaluation of the number of mergers in recent years and current industry conditions, that 279 is an underestimate of the number of mergers that are likely to occur annually.

[54] The staff estimates, based on estimates made by the staff in 1999 in connection with the application for an extension of OMB's approval for the rule 17a–8 paperwork collection burden, that the proposed amendments would cause each of the approximately 800 participating portfolios or series of registered investment companies to incur an annual burden of .75 hours (.25 hours of professional time and .5 hours of clerical time) to

amendments would require that written records describing the merger transaction and terms be maintained for six years after the merger, the first two in an easily accessible place.

We also anticipate that most if not all funds that engage in mergers with eligible unregistered funds will rely on rule 17a–8. Our staff estimates that approximately 13 merging funds would be covered by this provision in the first year following the adoption of this rule.[55] Our staff further estimates, based on discussions with professionals who have prepared similar valuation reports, that an independent evaluator's report would cost approximately $15,000 and that, in the aggregate, the annual burden associated with this aspect of the rule will be approximately $195,000.[56]

There is a cost associated with obtaining the approval of the acquired fund's outstanding voting securities. The staff estimates that shareholder approval will be sought by approximately twenty funds each year that would not otherwise have conducted a shareholder vote.[57] Funds or their advisers incur legal, mailing, printing, solicitation, and tabulation costs in connection with a shareholder vote. We estimate, based on discussions with representatives of funds and service providers, that the total cost to an acquired fund of obtaining shareholder approval for a fund merger is approximately $75,000. Thus, we anticipate that the total annual cost associated with this provision will be approximately $1,500,000. However, since a fund conducting a shareholder vote will not be required to send an information statement, the cost of the shareholder vote provision will be offset by the avoided cost of sending information statements. We estimate, based on discussions with fund representatives, that each information statement would cost $30,000 to prepare and deliver. Thus, we anticipate that a total of approximately $600,000 of costs will be avoided annually, and the net cost of the shareholder vote provision will be approximately $900,000.[58]

The Commission staff estimates that the paperwork burden arising from the proposed amendments reflects an increase in the paperwork burden associated with rule 17a–8 of 480 hours and an increase in the annual cost burden of approximately $1,095,000.[59]

VI. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') in accordance with 5 U.S.C. 604 regarding the amendments to rule 17a–8 under the Investment Company Act. A summary of the Initial Regulatory Flexibility Analysis (''IRFA''), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. The following is a summary of the FRFA.

A. Need for and Objectives of the Rule Amendments

The FRFA summarizes the background of the amendments. The FRFA also discusses the reasons for the amendments and the objectives of, and legal basis for, the amendments. Those items are discussed above in this release.

B. Significant Issues Raised by Public Comment

The Commission received no comments on the IRFA.

C. Small Entities Subject to the Rule

The FRFA discusses the effect of the amendments on small entities. A small business or small organization (collectively, ''small entity'') for purposes of the Regulatory Flexibility Act is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[60] Of approximately 3,650 active funds, approximately 190 are small entities. A fund that is a small entity, like other funds, will be affected by the amendments only if it seeks to merge with an affiliated fund, bank common trust fund, bank collective trust fund, or unregistered insurance company separate account.

The FRFA states that the rule amendments should not have a substantial impact on small entities. Like other funds, a small entity will be affected by rule 17a–8 only if it enters into a merger with an affiliated person in reliance on the rule.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

As amended, the rule conditions relief on the board making the best interests and non-dilution determinations and on those determinations and the bases therefor being recorded in the minute books of each registered company. The rule requires that fund directors request and evaluate such information as may reasonably be necessary to their determinations, considering and giving appropriate weight to all pertinent factors. As a basis for the non-dilution finding, the board of directors of a fund that merges with an unregistered entity must approve procedures for the valuation of the securities (or other assets) that the unregistered entity will convey to the fund. These procedures must provide for the preparation of a report by an independent evaluator that sets forth the fair market value of any such assets for which market quotations are not readily available. The FRFA describes the provision in the rule related to shareholder voting. Finally, the FRFA describes the requirement that any surviving fund maintain records relating to the merger transaction for six years, the first two in an easily accessible place, following the merger.

The FRFA explains that the amendments could benefit funds, including small entities, by expanding the availability of the rule to include mergers that are currently outside the scope of the rule. Funds that currently would have to incur the expense associated with filing applications for exemptive relief could rely on the rule.

E. Agency Action To Minimize Effect on Small Entities

The FRFA explains that the Commission has considered significant alternatives to the amendments that would accomplish the stated objective, while minimizing any significant

record board resolutions documenting the board's findings and to preserve records of the merger transaction.

[55] This estimate is based on a review of fund filings. It is greater than the estimate in the Proposing Release because the amendments to rule 17a–8 in the Proposing Release did not include unregistered insurance company separate accounts as eligible unregistered funds. *See supra* Section I.B.

[56] *See supra* note 45, which sets forth the basis for this estimate. This estimate is greater than the estimate in the Proposing Release because of the increase in the estimate of the number of merging funds that will rely on rule 17a–8. *See supra* note 55.

[57] Many funds are required by state law or their organizational documents to conduct a shareholder vote in the event of a merger. Moreover, even funds that are not required to obtain shareholder approval may do so in order to maintain good relations with their shareholders.

[58] This figure is less than the estimate in the Proposing Release because the figure in the Proposing Release did not take into account the avoided cost of sending information statements. *See* Proposing Release, *supra* note , at text accompanying n.95.

[59] This figure is the total of the estimated $195,000 annual cost associated with valuing the securities of eligible unregistered funds and the $900,000 annual net cost associated with obtaining shareholder approval. It differs from the figure of $3,650,000 in the Proposing Release because of (i) an increase of $45,000 in the estimated annual cost associated with valuing the securities of eligible unregistered funds, (ii) a decrease of $600,000 in the estimated annual cost associated with obtaining shareholder approval, and (iii) the elimination of the proposed echo voting provision and its accompanying cost, estimated at $2,000,000. *See supra* note 18 for a discussion of the proposed echo voting requirement.

[60] Rule 0–10 [17 CFR 270.0–10].

adverse impact on small entities. The Commission believes that no alternative could carry out these objectives as effectively as the amendments.

VII. Statutory Authority

The Commission is adopting amendments to rule 17a–8 pursuant to the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.17a–8 is revised to read as follows:

§ 270.17a–8 Mergers of affiliated companies.

(a) *Exemption of affiliated mergers.* A Merger of a registered investment company (or a series thereof) and one or more other registered investment companies (or series thereof) or Eligible Unregistered Funds is exempt from sections 17(a)(1) and (2) of the Act (15 U.S.C. 80a–17(a)(1)–(2)) if:

(1) *Surviving company.* The Surviving Company is a registered investment company (or a series thereof).

(2) *Board determinations.* As to any registered investment company (or series thereof) participating in the Merger (''Merging Company''):

(i) The board of directors, including a majority of the directors who are not interested persons of the Merging Company or of any other company or series participating in the Merger, determines that:

(A) Participation in the Merger is in the best interests of the Merging Company; and

(B) The interests of the Merging Company's existing shareholders will not be diluted as a result of the Merger.

Note to paragraph (a)(2)(i): For a discussion of factors that may be relevant to the determinations in paragraph (a)(2)(i) of this section, see Investment Company Act Release No. 25666, July 18, 2002.

(ii) The directors have requested and evaluated such information as may reasonably be necessary to their determinations in paragraph (a)(2)(i) of this section, and have considered and given appropriate weight to all pertinent factors.

(iii) The directors, in making the determination in paragraph (a)(2)(i)(B) of this section, have approved procedures for the valuation of assets to be conveyed by each Eligible Unregistered Fund participating in the Merger. The approved procedures provide for the preparation of a report by an Independent Evaluator, to be considered in assessing the value of any securities (or other assets) for which market quotations are not readily available, that sets forth the fair value of each such asset as of the date of the Merger.

(iv) The determinations required in paragraph (a)(2)(i) of this section and the bases thereof, including the factors considered by the directors pursuant to paragraph (a)(2)(ii) of this section, are recorded fully in the minute books of the Merging Company.

(3) *Shareholder approval.* Participation in the Merger is approved by the vote of a majority of the outstanding voting securities (as provided in section 2(a)(42) of the Act (15 U.S.C. 80a-2(a)(42))) of any Merging Company that is not a Surviving Company, unless—

(i) No policy of the Merging Company that under section 13 of the Act (15 U.S.C. 80a-13) could not be changed without a vote of a majority of its outstanding voting securities, is materially different from a policy of the Surviving Company;

(ii) No advisory contract between the Merging Company and any investment adviser thereof is materially different from an advisory contract between the Surviving Company and any investment adviser thereof, except for the identity of the investment companies as a party to the contract;

(iii)Directors of the Merging Company who are not interested persons of the Merging Company and who were elected by its shareholders, will comprise a majority of the directors of the Surviving Company who are not interested persons of the Surviving Company; and

(iv) Any distribution fees (as a percentage of the fund's average net assets) authorized to be paid by the Surviving Company pursuant to a plan adopted in accordance with § 270.12b-1 are no greater than the distribution fees (as a percentage of the fund's average net assets) authorized to be paid by the Merging Company pursuant to such a plan.

(4) *Board composition; independent directors.* (i) A majority of the directors are not interested persons of the Merging Company and those directors select and nominate any other disinterested directors.

(ii) Any person who acts as legal counsel for the disinterested directors is an independent legal counsel.

(5) *Merger records.* Any Surviving Company preserves written records that describe the Merger and its terms for six years after the Merger (and for the first two years in an easily accessible place).

(b) *Definitions.* For purposes of this section:

(1) *Merger* means the merger, consolidation, or purchase or sale of substantially all of the assets between a registered investment company (or a series thereof) and another company;

(2) *Eligible Unregistered Fund* means:

(i) A collective trust fund, as described in section 3(c)(11) of the Act (15 U.S.C. 80a–3(c)(11));

(ii) A common trust fund or similar fund, as described in section 3(c)(3) of the Act (15 U.S.C. 80a–3(c)(3)); or

(iii) A separate account, as described in section 2(a)(37) of the Act (15 U.S.C. 80a–2(a)(37)), that is neither registered under section 8 of the Act, nor required to be so registered;

(3) *Independent Evaluator* means a person who has expertise in the valuation of securities and other financial assets and who is not an interested person, as defined in section 2(a)(19) of the Act (15 U.S.C. 80a–2(a)(19)), of the Eligible Unregistered Fund or any affiliate thereof except the Merging Company; and

(4) *Surviving Company* means a company in which shareholders of a Merging Company will obtain an interest as a result of a Merger.

Dated: July 18, 2002.
By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18699 Filed 7–23–02; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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